

Exhibit 1

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 - - -
4

5 KEVIN RISTO, on behalf of : CASE NO. 2:18-cv-
6 himself and all others : 07241-CAS-PLA
7 similarly situated, :

8 Plaintiff, :
9 :

10 vs. :
11 :

12 SCREEN ACTORS GUILD-AMERICAN :
13 FEDERATION OF TELEVISION AND :
14 RADIO ARTISTS, et al.,
15 Defendants.

16 - - -
17

18 Wednesday, October 21, 2020
19 - - -
20

21 Remote videotaped stenographic deposition of
22 BRUCE CARLYLE BOUTON, conducted at the location of the
23 witness in Nashville, Tennessee, commencing at
24 approximately 9:03 a.m., on the above date, before
25 Rosemary Locklear, a Registered Professional Reporter,
Certified Realtime Reporter.

26 - - -
27

28 GOLKOW LITIGATION SERVICES
29 877.370.3377 ph | 971.591.5672 Fax
30 deps@golkow.com
31

1 So it's my understanding that you're a
2 professional guitar player, specifically, a pedal steel
3 guitar player; is that correct?

4 A. Yes.

5 Q. Can you talk to me a little bit about your
6 educational background?

7 A. I went to high school in Virginia, Vienna,
8 Virginia, and I moved to Richmond when I graduated, and
9 took a few classes in school and practiced my
10 instruments, and dropped out of college my first
11 semester and joined a band.

12 And I've had -- my education has been, you know,
13 47 years of a career.

14 Q. There you go. And -- sorry.

15 And so you also have worked as a songwriter; is
16 that correct?

17 A. Yes, I was a songwriter. I've written a lot of
18 songs. I've had songs recorded by different artists.
19 Yeah, I was lucky.

20 Q. Were you the composer or the lyricist, or both,
21 or --

22 A. Everything. You write -- you get in a room with
23 somebody and you -- you do whatever you need to do to
24 make a good song.

25 I'm a musician, I'm a guitar player, you know,

1 but I'm a singer, and I'm -- you know, I -- and I write
2 words.

3 Q. You do it all.

4 I have to say, in sort of looking into your
5 background, it was really impressive, everything that I
6 read about you.

7 A. Thank you so much.

8 Q. And are you -- are you currently married?

9 A. No. I'm divorced.

10 Q. And you have -- how many children do you have?

11 MR. THOMAS: Nico, I mean, I'm not sure how
12 relevant all this is, unless you're asking about
13 whether -- I know in the past you've asked about whether
14 people and their family have union affiliations, and so
15 forth. And if that's where you're going, I suppose
16 that's relevant, but just asking about --

17 MR. BRANCOLINI: That is where I was going.

18 MR. THOMAS: -- family I think is not really
19 that relevant.

20 MR. BRANCOLINI: That was where I was going,

21 Mr. Thomas.

22 BY MR. BRANCOLINI:

23 Q. Are either -- are either of your kids in unions,
24 Mr. Bruce?

25 A. No.

1 THE WITNESS: They just do -- they take care of
2 business. They pay us, they collect money for us,
3 they -- they follow up when somebody doesn't pay us.
4 They do research if something gets out, you know, on TV
5 or whatever, and they -- and nobody has been paid.

6 They -- you know, they run benefits if somebody
7 gets sick. They -- you know, I mean, they speak to
8 leadership officials to try to get, you know, parking
9 for the union. I mean, it's the union. You know,
10 you're looking out for the benefits for musicians.

11 MR. BRANCOLINI: Great.

12 BY MR. BRANCOLINI:

13 Q. And do the locals compile session reports?

14 A. Yes.

15 Q. And what are session reports?

16 A. When we do a recording session, we fill out a
17 timecard, and they have to fill out, I guess it's a
18 B-Form. I'm really not -- I don't know all the details,
19 all that. I just know that we have -- we keep really
20 great records in Nashville. We're very unique in that
21 sense.

22 Q. I was -- I'm going to be honest. I was going to
23 ask what the difference between a session report and a
24 B-Form was because I was a little unclear myself, but it
25 sounds --

1 A. You're talking the same. It's just paperwork.

2 Q. Do you know what information is contained on a
3 session report?

4 A. Yes. The song that was recorded, the date of
5 the session, the artist, and the musicians that played
6 on the session.

7 Q. And do you know what personal information is
8 collected by the musicians and artists on these -- on
9 the session reports? Is there any?

10 A. Yeah. Social Security number.

11 Q. And so the primary purpose of session reports is
12 to make sure artists get paid; is that correct?

13 A. Right. And to have the data for down the road.

14 Q. And so how does the -- how do you know what --
15 well, how does the local come into custody of the
16 session reports?

17 A. As I just said, we sign timecards, and we turn
18 it in to the local, and the local fills out the contract
19 and they mail it to the record label or they mail it to
20 the artist or they -- or they do whatever.

21 You know, I mean, not to the artist, but they
22 mail it to the record label and the record label pays
23 everybody.

24 Q. So the artist fills out the form and brings it
25 to the --

1 A. No, the artist doesn't have anything to do with
2 it. The musicians fill out the form.
3 We fill out a timecard on the recording session
4 and we turn it in to the union, and then the union fills
5 out the contract, they do the more detailed paperwork
6 where they explain all the things, the components on it,
7 and health and welfare, and they send it to the record
8 label with the amount of money that they owe each
9 musician, and then the record labels write a check to
10 each individual musician.

11 Q. Got it. Okay.

12 So you did some work with the -- with Local 257,
13 but you still are primarily a full-time musician; is
14 that -- is that correct?

15 A. Yeah, that's what I do. I haven't -- I haven't
16 been on the executive board for Local 257 for ten years,
17 probably.

18 Q. Got it.

19 And when were you appointed to -- trustee of the
20 Fund?

21 A. I think you probably know that, but I'm
22 guessing, my estimate is 2011.

23 Q. And what was the selection process like to
24 become a fund trustee?

25 A. I think people knew that I had a good knowledge

1 BY MR. BRANCOLINI:

2 Q. You talked a little bit about the conversation
3 with Ray Hair.

4 Can you elaborate on that, as best you can --

5 A. I just remember --

6 Q. -- that conversation --

7 A. I just remember having a conversation just
8 saying that the union needed to be paid back or
9 something for the money that they had put into this.

10 And that may have been -- yeah. Yeah. Yeah.
11 That's -- I'm trying to think. Yeah.

12 Q. When you say "just saying that the union needed
13 to be paid back," do you mean Mr. Hair -- that was
14 Mr. Hair's position?

15 MR. THOMAS: Objection.

16 This whole line of -- this whole subject has
17 been asked and answered before, but I'll allow you to
18 continue.

19 So go ahead and answer.

20 THE WITNESS: You know, I -- as I've said, I
21 think the union felt -- the union -- unions felt like
22 they had put money into, you know, establishing this
23 agreement between SoundExchange and the non-featured
24 musicians.

25 And then when the Fund was started, you know,

1 and money started coming in, you know -- I mean, they
2 did -- they did everything for, you know, all those
3 years just, you know, gratis. So, I mean, they were
4 never compensated. It came out of union dues.

5 BY MR. BRANCOLINI:

6 Q. Do you recall what form this conversation took?
7 Was it in person, via email, over the phone?

8 A. I think it was just a casual conversation at one
9 point, because I think everybody was just excited that
10 this fund was starting to -- getting ready to start
11 taking off.

12 Q. And in that conversation did you express your
13 own opinion on the Service Agreement?

14 A. If I can even remember the conversation, which I
15 can't really remember it exactly, as I said, it was --
16 it was very much in passing, I probably just
17 acknowledged with a, "yeah, okay," or something. We
18 didn't have a conversation.

19 Q. Did you help at all with the drafting of the
20 Services Agreement?

21 A. No.

22 Q. Was there any negotiation about the terms of the
23 Service Agreement?

24 MR. THOMAS: Objection. Vague. Lacks
25 foundation. Overbroad.

1 questions.

2 A. (Witness reviews document.) Yeah, I've read
3 that.

4 Q. Okay. So you were present at this meeting;
5 correct?

6 A. Yes, sir.

7 Q. And so, prior to this meeting, were you provided
8 a draft of the Services Agreement?

9 A. I don't think so.

10 Q. It wasn't --

11 A. Not that I recall.

12 Q. You said that you received minutes prior to the
13 meeting sometimes.

14 Was there anything included at all about the
15 service fee?

16 A. Really, I don't recall. That was seven, eight
17 years ago and, you know, I'm pretty bad about keeping
18 all my records. They're probably in a box somewhere,
19 but I think this is -- yeah.

20 Q. Completely fair.

21 Do you recall what was presented at this meeting
22 about the service fee?

23 A. Yeah. Just that this is what they wanted and we
24 needed to approve it as a board.

25 Q. Do you recall what was in that presentation?

1 A. I'm sorry. What was what?

2 Q. Do you recall what was in that presentation?

3 A. No. I mean, it was just -- we just -- it was
4 brought up. I think -- you know, I think probably, you
5 know, that Dennis, who ran the Fund, probably brought it
6 up and said, "Here's the proposal. We need to vote on
7 it."

8 Q. And when you say they want -- they wanted it to
9 be approved by the board, who was the "they" there?

10 A. Well, it's the -- it's the -- it was -- since
11 the service fee was between the Fund and the unions, it
12 was the head of the Fund and the head of the unions.
13 The deal wasn't with me.

14 Q. And they didn't -- did they discuss percentages
15 at all at this meeting, at this board meeting?

16 MR. THOMAS: Object to the form.

17 THE WITNESS: I don't remember what the
18 percentages that were discussed were, but this was the
19 percentage that was agreed upon.

20 BY MR. BRANCOLINI:

21 Q. Beyond approval, did they ask for your opinions
22 on the Service Agreement?

23 A. I think the way meetings worked, if you had an
24 opinion, you would just volunteer an opinion. I don't
25 think anybody says, "Does anybody have an opinion?" I

1 think the conversation was open.

2 Q. Did you -- scratch that.

3 Do you recall if any trustees expressed an
4 opinion about the service fee?

5 A. I mean, I just -- I think we just discussed it
6 and discussed that the unions provided research and the
7 unions, you know, provided lobbying power and, you know,
8 they -- there was a little bit of a clout in Congress
9 and everything like that, and that -- and that they had
10 done a lot of work to get these -- get this Fund
11 established, so -- I mean, get the -- get the, you know,
12 Digital Millennium Act established.

13 Q. Do you recall -- sorry. Scratch that.

14 You said I think we discussed it and discussed
15 that the unions provided research.

16 When you say "we discussed it," do you recall if
17 it was a general conversation amongst all the trustees
18 or was it primarily the -- Mr. Dreith, Mr. Hair, and
19 Mr. Crabtree-Ireland as part of their presentation of
20 the service fee?

21 A. We were just all there. I don't know when and
22 how everybody spoke and what order everybody spoke in.

23 Q. Of course. I don't mean -- I don't expect you
24 to quote them from memory.

25 I'm more just meaning if you recall --

1 A. Everybody who was in that -- everybody that's
2 listed was in the room. I had forgotten that Jon Joyce
3 was not at that meeting. I assumed he was there. So I
4 guess it was -- it was whoever -- you know, whoever was
5 the trustees, and it was -- I think it was in executive
6 session. I'm not sure.

7 I guess we could go back on the minutes and see
8 if we went into executive session. I think it probably
9 was executive session, because there was -- you know, I
10 wouldn't think they would have the accountants in there
11 and they wouldn't have had the tech people in there, and
12 everything else. So it was pretty much, you know, the
13 trustees and the -- yeah, and the head of the Fund.

14 Q. Do you know -- do you recall if, as part of that
15 conversation, there was a discussion of the reasonable
16 cost of services that were provided to the Fund by the
17 unions?

18 MR. THOMAS: Objection to the form. Vague as to
19 "reasonable cost."

20 BY MR. BRANCOLINI:

21 Q. You may answer, Mr. Bouton.

22 A. I'd defer to what Dennis Dreith explained at the
23 meeting.

24 Q. Do you recall what he explained at the meeting?

25 A. I think Dennis felt like at the time that was a

1 reasonable way to do things.

2 Q. So, putting aside the concept of a service fee,
3 if the service fee is reasonable, do you recall any
4 specific conversation about the calculation of the
5 amount that was decided on for the service fee?

6 Does that distinction make sense?

7 A. Yeah. But the amount was a percentage. The
8 amount was a percentage of distributions, and at the
9 time distributions weren't that high.

10 Q. Was there any conversation about why you should
11 do it as a percentage, instead of some other method of
12 assessing a fee?

13 A. I don't recall. I -- I -- you know.

14 Q. So -- and this was approved at that meeting; is
15 that correct?

16 A. The trustees -- wait a minute. Well, let's see
17 if we -- was it approved? Does it say in the meetings?
18 Or did we come back and approve it later?

19 Q. It's sort of unclear from the meeting minutes,
20 but it was approved -- it was ratified in July of that
21 year.

22 A. And this meeting was when?

23 Q. June.

24 A. Yeah. Well, then it looks like it was approved.

25 Q. Would that approval have to have occurred at a

Exhibit 2

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4 KEVIN RISTO, on behalf)
of himself and all others)
5 similarly situated,)
)
6 Plaintiffs,)
)
7 vs.) Case No. 2:18-cv-
) 07241-CAS-PLA
8 SCREEN ACTORS GUILD-AMERICAN)
FEDERATION OF TELEVISION AND)
9 RADIO ARTISTS, a Delaware)
corporation; AMERICAN FEDERATION)
10 OF MUSICIANS OF THE UNITED STATES)
AND CANADA, a California)
11 nonprofit corporation; et al.,)
)
12 Defendants.)
_____)

13

14

15

16 DEPOSITION OF DUNCAN CRABTREE-IRELAND

17 CONDUCTED VIRTUALLY

18 TUESDAY, FEBRUARY 16, 2021

19 9:05 a.m.

20

21 Job No. 269207

22 Pages: 248

23 Reported by: Lorie Rhyne, CSR, RPR, CRR

24 Appearing remotely from San Diego, California

25

1 Q. Well, after the organizations merged -- once
2 the merger occurred, I just want to get a sense of the
3 overall responsibilities that you had and whether or
4 not those responsibilities include advocacy for
5 performing rights after the merger occurred.

6 MR. THOMAS: Objection. Vague.

7 THE WITNESS: Yes, they did. Although, I
8 would just note my responsibilities in that area
9 existed prior to the merger as well, just not
10 specifically for the music part of our world but for
11 the audiovisual part where also performance rights can
12 be an issue.

13 BY MR. KIESEL:

14 Q. Great. And did your work also involve
15 advo- -- advocacy for intellectual property rights?

16 A. Yes.

17 Q. And after the merger, did you do any
18 lobbying with the US government?

19 A. I don't know that I did lobbying -- it
20 depends on how you define the word "lobbying." Did I
21 do advocacy with US government? Yes. Did I do
22 lobbying that would require registration as a lobbyist?
23 No.

24 Q. I take it you've never done work that
25 required that you register as a lobbyist?

1 BY MR. KIESEL:

2 Q. Got it. Did you do any lobbying with
3 international governments?

4 A. I did --

5 MR. THOMAS: Objection. Vague.

6 THE WITNESS: Sorry.

7 MR. THOMAS: Go ahead.

8 THE WITNESS: I think I need to pause
9 longer.

10 I did advocacy with certain foreign
11 governments, yes. Again, I would not define it as
12 lobbying.

13 BY MR. KIESEL:

14 Q. What advocacy did you do with foreign
15 governments?

16 A. For example, participated in programs and
17 workshops that were sponsored by the World
18 Intellectual Property Organization, which were designed
19 to encourage governments that had not established
20 performance rights to establish them and to help
21 educate them on how to set up a system by which those
22 performance rights would be collected and distributed
23 to artists.

24 Also to advocate for the enforcement of
25 existing performance rights regimes for the benefit of

1 US performers who, in many cases, are, in my view, not
2 treated fairly by foreign governments' performance
3 rights, administration systems.

4 Q. And for that -- that advocacy that you were
5 doing for performance rights, did it actually sometimes
6 require you travel to European countries?

7 A. Yes. Yes.

8 Q. And what countries did you travel to?

9 A. At -- if we're talking about at any time
10 since 2000, quite a -- quite a few. I should note that
11 some of that advocacy would occur in conjunction with
12 other performance rights-related business, such as
13 attending meetings of SCAPR, which is an umbrella group
14 for performance rights organizations, et cetera.

15 So I could try to give you a list of what
16 those trips were, what countries that involved. But
17 there were a number of countries in Europe, also
18 Thailand, those jump out. Probably a few others, if
19 that would be helpful.

20 Q. Sure.

21 A. Okay. Well, I have a -- I have a little
22 list that I have prepared.

23 Q. Okay.

24 A. So is it all right if I refer to that?

25 Q. That would be fine. As long as we know

1 you're referring to it, go for it.

2 A. Okay. So let's see. If we -- my list
3 starts in 2013, and I understand your question to be
4 where outside of the United States did I go. So -- is
5 that correct?

6 Q. For advocacy purposes, sure.

7 A. Right. Okay. So Germany, Berlin, in
8 December of 2013. Geneva, Switzerland, same month.
9 Madrid, Spain, in March of 2014. Again, to Geneva,
10 Switzerland, in June of 2014. Amsterdam, Netherlands,
11 June of 2014. Brussels, Belgium, September 2014.
12 Belgrade [sic], Estonia, June of 2015. Toronto,
13 Canada, in June of 2016.

14 Sorry, I need to correct that. There's an
15 error in my list, which is the one that I referenced in
16 Belgrade -- Belgrade is not in Estonia. Belgrade is in
17 Serbia, so that was a mistake. So Belgrade, Serbia, in
18 June of 2015. Then in Tallinn, Estonia, in May of
19 2017. Paris, France, in June of 2018. Geneva,
20 Switzerland, again, in June of 2018. São Paulo,
21 Brazil, in May of 2019. And Bangkok, Thailand, in
22 October of 2018.

23 Q. Thank you.

24 Going to the -- the Fund. What was the
25 purpose of the creation of the Fund, to your

1 understanding?

2 A. The purpose of the creation of the Fund was
3 to distribute royalties to nonfeatured performers
4 under -- well, and it was created in connection with
5 the establishment of the performance right for
6 noninteractive digital transmission of sound recordings
7 in Section 114(g) of the Copyright Act, and it's also
8 the purpose of the Fund to collect other performance
9 royalties for nonfeature performers, and it does so
10 outside the United States, which does -- obviously,
11 don't arise under the Copyright Act. But the
12 fundamental purpose of the Fund is to collect and
13 distribute those royalty payments to nonfeatured
14 artists.

15 Q. And a nonfeatured artist,
16 Mr. Crabtree-Ireland, could be both a union and a
17 nonunion member?

18 A. Yes.

19 Q. What year was the Fund created?

20 A. I believe approximately 1998.

21 Q. And when the Fund was originally created,
22 was there an organizing board that oversaw the Fund?

23 A. There were trustees established to oversee
24 the Fund from its inception in 1998.

25 Q. Do you know what the origin was of the

1 Q. Thank you.

2 So let's go back to Exhibit Number 1. And
3 I'd like to just start with the General Purpose. And
4 we're on page 3 of the Fund, and we're at Section 2.
5 And Nico is highlighting that for us.

6 Could you read for us, please, what --
7 what -- what's been highlighted?

8 A. Sure. Section 2. General Purpose. The
9 Fund shall be a trust fund and shall be used for the
10 purpose of receiving and distributing royalties or
11 remuneration to artists in accordance with such
12 agreements for receipt and distribution of remuneration
13 as are entered into by the unions with the relevant
14 collecting societies, rights organizations or other
15 appropriate entities. The Fund shall further provide
16 the means for financing the expenses of the trustees
17 and the operation and administration of the Fund in
18 accordance with this agreement and declaration of
19 trust. The Fund is intended to satisfy the
20 requirements of Section 501(c)(6) of the
21 Internal Revenue Code and shall be construed in all
22 respects consistently with Section 501(c)(6).

23 Q. Thank you. Do you know if this is a trust
24 or a 501(c)(6) nonprofit corporation?

25 A. I believe it is a trust.

1 distribution. Because in some cases, the research for
2 that takes a while. And so we set up a committee, I
3 believe, around maybe 2014ish to -- to look at that
4 issue and to determine what, if anything, we should do
5 about it and to, you know, take the necessary steps to
6 bring a recommendation back to the trustees.

7 BY MR. KIESEL:

8 Q. Got it. If I were to ask you to describe
9 what the Fund does, could you provide a brief
10 description of what the Fund does?

11 MR. THOMAS: Objection. Overbroad.
12 But you can answer.

13 THE WITNESS: Sure. The Fund collects
14 royalties, both domestically and internationally;
15 determines who is entitled to receive payment of those
16 royalties under our distribution guidelines and then
17 distributes the money to them.

18 BY MR. KIESEL:

19 Q. Do you have an estimate as to how many new
20 performers the Fund has to research each year, just a
21 ballpark?

22 MR. THOMAS: Objection. Vague.

23 THE WITNESS: How many new performers? Is
24 that what you said?

25 BY MR. KIESEL:

1 in exchange for those services and data.

2 Q. What would be a good way to describe the
3 data coming from the unions as -- as we're going
4 forward? Do you just simply call it data? Is that the
5 best way to do it or something else?

6 (Stenographer clarification.)

7 BY MR. KIESEL:

8 Q. As regard to what the unions were providing?

9 A. Sure. I mean, as a general term, yes. I
10 mean, there's obviously specific pieces of it that we
11 could define more specifically. But generally, that's
12 fine.

13 Q. Okay. When you had the conversation as you
14 were onboarding to become a trustee, what was your
15 understanding of the reason why they wanted to have a
16 service fee in place for the unions?

17 MR. THOMAS: Objection. Vague. Calls for
18 speculation.

19 THE WITNESS: I think the idea was that for
20 a long time now the unions had been sort of informally
21 and unofficially providing a lot of data and a lot of
22 services to the Fund that the Fund was extremely
23 reliant on and, in fact, was essential to the Fund.

24 And one of the things that was going on
25 during this time period was what I would call a sort of

1 professionalization of the operations of the Fund. The
2 Fund was going from being a small sort of
3 mom-and-pop-type operation to a larger, more
4 professional sort of type of environment. And I think
5 there was a concern that having, essentially, such a
6 significant dependence on data and services that come
7 from the union without any kind of agreement in place
8 to assure the continued provision of those services was
9 not wise.

10 I think there was also a sentiment that the
11 unions were starting to get to a place where they did
12 not wish to continue to subsidize the operations of the
13 Fund by providing services, et cetera, for free and
14 that it would be best to define how that was going to
15 work so that we didn't end up in some kind of a
16 situation where the services or the data were withdrawn
17 and leaving the Fund without access to that
18 information.

19 BY MR. KIESEL:

20 Q. Did you have a conversation with either
21 Ray Hair or Dennis Dreith or anyone else connected to
22 the Fund before that service fee was voted on how the
23 unions would be reimbursed for the costs associated
24 with the data they were providing the Fund?

25 MR. THOMAS: Object to the form. Misstates

1 A. When you say "any beneficiary of the Fund,"
2 are you excluding a trustee who might have also been
3 the beneficiary?

4 Q. Yes.

5 A. Okay. Then not to my knowledge, no.

6 THE VIDEOGRAPHER: Counsel, this is the
7 videographer --

8 MR. KIESEL: Videographer, go.

9 THE VIDEOGRAPHER: I -- I just need a break
10 in a couple of minutes just to put a break in between
11 the video.

12 MR. KIESEL: Well, the good news is we're
13 approaching the hour, and so why don't we take a break
14 right now. You can get the video recycled. We'll come
15 back at 11:30 and continue with Mr. Crabtree-Ireland's
16 deposition.

17 THE VIDEOGRAPHER: Thank you very much.

18 We are now going off the record. The time
19 is 11:17 a.m.

20 (A recess is taken.)

21 THE VIDEOGRAPHER: We are now going back on
22 the record. This is the beginning of Media Number 2,
23 and the time is 11:33 a.m.

24 BY MR. KIESEL:

25 Q. So a little bit earlier, you said the Fund

1 was reliant on the unions to provide them information
2 for the nonfeature performers so they could identify to
3 whom they should be paying royalty checks to; correct?

4 A. Yes.

5 Q. Okay. Do you know what percentage of the --
6 in general, performers were identified by, say,
7 SAG-AFTRA in providing the data to the Fund they were
8 able to identify?

9 MR. THOMAS: Objection. Vague. Lack of
10 foundation.

11 THE WITNESS: Well, I guess I'm
12 understanding your question to be of the performers
13 identified by the Fund, how -- you know, what
14 proportion of them were identified based on information
15 provided by SAG-AFTRA. Is that what you're asking me?

16 BY MR. KIESEL:

17 Q. That is what I'm asking, correct.

18 A. I don't know. Sorry -- sorry to clarify
19 that question only to tell you I don't know. But I
20 don't know.

21 Q. If I were to tell you that it was less than
22 30 percent of the performers were identified by the
23 data provided by SAG-AFTRA, would that surprise you?

24 A. I -- it -- do you -- when you say "were
25 identified," do you mean were identified by -- as to

1 Bearing in mind that a minority of total performances
2 would be vocalists, SAG-AFTRA would only retain or
3 likely only have records for vocalists, since we don't
4 represent nonvocalist musicians.

5 And, of course, as -- as has been pointed
6 out from the beginning of this process, the Fund is
7 responsible for distributing royalties to all
8 performers regardless of their union status, which
9 means that they would be -- you know, the Fund
10 distributed -- distributes royalties for performances
11 that are not covered by the union, which means that for
12 those performances, there would be no session form;
13 there would be no B report. Although the unions might
14 still, and probably often do, have contact information
15 and identifying information for those nonunion
16 individuals.

17 So I guess my answer to you is, yeah, I
18 would expect it to be a few percentage points higher,
19 but it doesn't shock me that it would be 26 percent in
20 the context of SAG-AFTRA.

21 Q. Would you agree that SAG-AFTRA would want to
22 provide the Fund information about its union members
23 for the Fund to make the payment to the union members?

24 MR. THOMAS: Objection. Vague.

25 THE WITNESS: I think SAG-AFTRA would like

1 the Fund to make payment to its union members, for
2 sure. I also think that SAG-AFTRA and SAG-AFTRA
3 members would like the costs of doing that to be borne
4 by the people receiving those royalties and not to be
5 subsidized by other members of the union who are not
6 part of that payment stream.

7 BY MR. KIESEL:

8 Q. If you're paying union dues for your
9 membership within SAG-AFTRA, part of your union dues
10 would go towards having the union assist in getting you
11 compensated for the work that you performed.

12 Would you agree with that?

13 A. If you are --

14 MR. THOMAS: Objection. Vague.

15 THE WITNESS: I'm sorry. I thought I was
16 pausing long enough. I need to pause longer, I guess.

17 If you are receiving -- so the due structure
18 of SAG-AFTRA -- and I can't speak to AFM -- but the due
19 structure of SAG-AFTRA involves a base dues amount
20 that's a flat fee regardless of what amount of work you
21 do or if you have any earnings at all; and then there
22 is a percentage dues that's payable for all of your
23 earnings achieved under union contracts, which is
24 approximately 1.575 percent.

25 That dues is charged on, for example,

1 residuals and other payments that flow from the union's
2 collective bargaining agreements, and so when a union
3 member receives a residual payment that's processed by
4 the union, they are paying the costs of that processing
5 by virtue of being charged dues on that money that
6 they've received as a percentage.

7 The royalties that are paid through the AFM
8 and SAG-AFTRA fund are not subject to any dues by the
9 union. There is no fee charged by the union to the
10 members for receiving those payments. And so from my
11 perspective, it's appropriate for the costs of
12 collecting and distributing those agreements to be
13 charged through the administrative fee rather than sort
14 of borne by the other members who are paying dues on
15 their earnings when these royalties are not subject to
16 dues.

17 BY MR. KIESEL:

18 Q. Do you know what percentage of sessions are
19 union session, say, in 2020 versus nonunion session?

20 A. In -- in -- I'm sorry. In the overall
21 industry or --

22 Q. Yes.

23 A. Well, I mean, all of the sessions done for
24 major record labels are union sessions, and many
25 sessions done for indie labels are union sessions. But

1 Q. Was there ever an effort to do an audit to
2 quantify the value of the services provided by the
3 unions to the Fund that you're aware of?

4 A. Not to my knowledge.

5 Q. Would you agree that a good practice would
6 have been to have done some sort of audit before -- I'm
7 going to use the words "arbitrarily selecting a
8 percentage for the services"?

9 A. Well, I certainly understand the point
10 you're making. I guess our thinking -- at least my
11 thinking at the time -- was we did not want to increase
12 the cost of providing the services by spending a bunch
13 of money having someone go do time and motion studies
14 or other extensive, you know, analytical procedures
15 when we felt like we could approximate that with the
16 knowledge of the people who were involved in the
17 discussions.

18 So -- so I -- I think that it was a
19 perfectly appropriate way to approach it, but I
20 recognize there could have been other ways to approach
21 it as well.

22 Q. Was there ever a discussion about wanting to
23 perform some type of audit before establishing a set
24 percentage for the data being provided or the services
25 being provided?

1 A. Yes. We talked about it.

2 Q. And did the -- was the decision to reject
3 that because it might be more expensive to do that type
4 of audit to figure out what the proper percentage
5 should be?

6 A. Well, I think -- I -- I somewhat disagree
7 with the last part of that question. It was an attempt
8 to limit the costs associated with setting up the
9 service fee agreement. I don't think that it's
10 accurate to state that we could only figure out an
11 appropriate percentage by doing a time and motion study
12 or extensive and analysis procedures.

13 But in any event, that was the reason for
14 not doing that was we felt that it would actually add
15 to the costs of it in a way that was not necessary or
16 sustainable.

17 Q. Was that a discussion that was held at the
18 board meeting where the decision was made to approve a
19 3 percent fee?

20 A. It was discussed amongst the trustees, as
21 well as something that was discussed between myself and
22 David White.

23 Q. And by "discussed amongst the trustees" and
24 you and David White, were those all before the board
25 meeting took place where the vote was made?

1 A. The trustee discussion, yes, definitely. I
2 don't -- don't recall the timing of the discussion with
3 David White as to whether it was prior to or after that
4 vote was taken.

5 Q. Was there an effort to determine how much it
6 would cost to perform a study to determine what an
7 appropriate percentage would be?

8 A. We -- if you -- if by an effort to determine
9 the cost -- I mean, I guess the answer is yes in the
10 sense that we consulted with our -- with people who
11 were knowledgeable in conducting time and motion
12 studies. We did not go out and seek bids from any
13 companies to actually do that work.

14 Q. So who did you discuss the time and motion
15 study concept with before the vote?

16 A. To my recollection, with Dennis, with other
17 trustees, with counsel, I believe with the Fund's
18 outside accountants, and I think that's probably it.

19 Q. Do you recall how much, in 2012, 3 percent
20 of the Fund's distributable amounts there were in the
21 year 2012?

22 MR. THOMAS: Objection. Vague.

23 THE WITNESS: I think I have that. Well, I
24 may not have 2012, actually. Because we didn't
25 actually do that in 2012, but, you know, it would have

1 a way to track just the literal time spent by people
2 responding to research requests for the Fund and then
3 limit the service fee to that.

4 The Fund wanted and needed services beyond
5 that, and the unions have data that is hard to locate
6 for the Fund beyond just that information that's not
7 really tied to just looking up that data but also is
8 tied to collecting the data on the union side in the
9 first place. So I really --

10 BY MR. KIESEL:

11 Q. Is it fair to say, though -- sorry.

12 A. Sorry.

13 Q. Sorry. Is it fair to say that you can't
14 really quantify what percentage of the data that's
15 provided to the Fund is, quote, hard to find the data,
16 can't quantify that?

17 MR. THOMAS: Objection. Vague. And you
18 also cut him off.

19 I will let you finish your answer.

20 MR. KIESEL: I apologize. I didn't mean to
21 cut you off.

22 BY MR. KIESEL:

23 Q. So let me -- let me back up. I'm going to
24 withdraw that last question and let you finish your
25 response. I apologize for that. Then we'll get into

1 the other one. So...

2 A. Well, I think that I was just trying to say
3 that I -- I feel like the -- there's a lot of
4 information that has value and is expensive to collect
5 and administer that is hard to -- for the Fund to -- to
6 get anywhere else. And so that's -- that has both --
7 there's both cost and there's also value associated
8 with it, and I don't think a time and motion study
9 would accurately encompass both of those elements.

10 Q. And so can I just ask you what percentage of
11 the total data provided to the Fund is data that's
12 really hard to find but for the unions providing that
13 data to the Fund?

14 A. Well --

15 MR. THOMAS: Objection. Vague.

16 THE WITNESS: Sorry.

17 I think, Number 1, the identification of the
18 nonfeatured artists on tracks is actually a very
19 challenging and difficult thing to do. I mean, we've
20 had that conversation many, many times with Dennis and
21 with others about how hard that is. And Dennis and
22 others who have to do it or had to be involved with it
23 on a daily basis have told me that -- that the union
24 session reports and B-forms are among the best possible
25 way to find that information in a reliable form.

1 the AFM.

2 Q. Rank-and-file member?

3 A. Yes.

4 Q. Let's turn to page 2, Bates Number
5 DEFS_40631A of Exhibit Number 3. I've taken the
6 liberty of prehighlighting it. And this was the
7 portion of the minutes that reflect the administrative
8 fee vote. Could I ask you to just read in what it says
9 below Administrative Fee?

10 A. Sure. A discussion ensued regarding the
11 Fund entering into a service agreement with the
12 American Federation of Musicians and --

13 Q. Little slower for the court reporter.
14 Sorry.

15 A. -- with the American Federation of Musicians
16 and SAG-AFTRA for ongoing support including membership
17 data and other information and services to assist in
18 facilitating distributions. It was moved, seconded and
19 carried that the Fund enter into a service agreement
20 with the two unions, pursuant to which the unions would
21 provide information and services important to the Fund,
22 and the Fund would pay a service fee consisting of an
23 amount equal to 3 percent of each distribution (after
24 the deduction of administrative fees), with one-half
25 payable to the AFM and one-half payable to SAG-AFTRA.

1 Do you want me to keep going or stop there?

2 Q. No, that's good right there. Thank you.

3 A. Okay.

4 Q. Do you believe it was Patricia Polach who --
5 who actually wrote these minutes?

6 MR. THOMAS: Asked and answered.

7 THE WITNESS: Yes.

8 BY MR. KIESEL:

9 Q. To the best of your recollection, what was
10 the discussion --

11 A. I -- I apologize. Could I just clarify?
12 I -- I believe that, but I do not know if
13 she might have had any kind of an associate or someone
14 else help her with them. I don't know the answer to
15 that. But I assume she was responsible for them being
16 drafted.

17 Q. Thank you. To the best of your
18 recollection, did anyone speak against the proposal on
19 June 4, 2013?

20 A. The best of my recollection, no.

21 Q. Do you recall whether there were questions
22 asked of -- by anybody, any trustees, before the vote?

23 A. There was definitely some discussion. I
24 don't recall if it was in the form of questions or more
25 just discussion.

1 Q. And I realize it may be difficult to parse
2 out discussions that you had before the June 4, 2013
3 board meeting and what occurred at the June 24
4 [verbatim], 2013 board meeting. But can you give us a
5 sense of what the discussions were that were having
6 about the administrative fee?

7 A. As far as I can recall, the main discussions
8 were about the amount of the fee, how it would be
9 structured and what the percentage -- once it was
10 seemingly a consensus that there would be a percentage,
11 what the percentage would be.

12 Q. At the June 4, 2013 meeting, do you recall
13 whether there were alternative percentages proposed or
14 simply the 3 percent was the number that had been
15 agreed to by consensus, and that was the number
16 presented to the board for consideration?

17 A. I don't recall because the -- the
18 discussions about this kind of have blend -- blurred
19 together in my head, so I'm not really sure at that
20 meeting which of those is the case.

21 Q. Was a written version of the service
22 agreement provided to the trustees prior to this
23 meeting, if you recall?

24 A. I believe so.

25 Q. Was a draft outline of the services

1 Q. That's an IRS form that the nonprofits file
2 with the IRS?

3 A. Yes.

4 Q. And, in fact, there was an original 990 form
5 which suggested there was a conflict of interest policy
6 in place at the time the original 990 was filed in
7 2014, but an amendment was made acknowledging that
8 there was no conflict of interest policy in place;
9 correct?

10 A. Yes. That's my understanding.

11 Q. As a cochair of the Fund, would you agree
12 that you had a fiduciary duty to the beneficiaries to
13 the Fund?

14 A. As a trustee of the Fund, I would agree I
15 had a fiduciary duty to the beneficiaries of the Fund.

16 Q. And whether you're cochair or a trustee, you
17 have the same fiduciary duty?

18 A. I believe so, yes.

19 Q. Okay. And so would you agree that one of
20 those fiduciary duties is to make sure that you are not
21 wasting Fund assets in whatever the expense is
22 connected to the Fund? You have a fiduciary duty to
23 make sure the Fund dollars are properly spent?

24 A. Yes.

25 Q. Would you agree that there could be a

1 conflict between the Fund and the money it was to be
2 paying to one of the unions and the hat you wear on
3 behalf of the union -- not the Fund, but the union --
4 to recover money that the union was purportedly ex- --
5 expending for the benefit of the Fund?

6 MR. THOMAS: Object to the form. Vague.
7 Calls for a legal conclusion.

8 THE WITNESS: You mean in the sense that the
9 union would be trying to get more money out of the Fund
10 and the Fund would be trying to get -- to pay less
11 money to the union? Is that what you mean?

12 BY MR. KIESEL:

13 Q. Not necessarily. So the -- the Fund wants
14 to make sure that it preserves as much of its money for
15 distribution to the beneficiaries as it possibly can;
16 right?

17 A. Yes.

18 Q. On the other hand, the union wants to make
19 sure it's being reimbursed or given money back for
20 whatever expenses it's incurring or value it's
21 providing to the Fund to get back paid money to the
22 union for the work it's doing; right?

23 MR. THOMAS: Object to the form.

24 THE WITNESS: I mean, yes, but I mean, I
25 guess I would also just point out. I mean, as you --

1 as you noted earlier, these are two nonprofit
2 organizations. So the union is not trying to make
3 money. The union is not trying to get the most money
4 it can get out of the Fund.

5 The Fund is not trying to somehow wheedle
6 the union into giving it stuff for free that it should
7 reasonably pay for, just like it doesn't go and try to,
8 you know, get other service providers to -- to do that.

9 So I -- I -- I feel like there's a -- a
10 conflict that's presumed in the nature of the question
11 that doesn't really exist because both entities were --
12 had their targets set on the same result, which is a
13 reasonable arrangement that provided for services to be
14 provided that the Fund needed and that the union would
15 be fairly compensated for those services.

16 So I -- I guess I don't buy into the
17 presumption that there's a conflict the way there would
18 be with two for-profit entities whose objective is to
19 maximize the amount of money that they make and it's a
20 zero-sum game.

21 BY MR. KIESEL:

22 Q. Would you agree that if money is taken from
23 the Fund and provided to the union, that that is less
24 money available to be distributed to the beneficiaries
25 of the Fund?

1 A. Yes.

2 Q. And the beneficiaries want to maximize as
3 much money as they can in the Fund to ensure their
4 distribution of the distributable amount in the Fund?

5 MR. THOMAS: Object to the form.

6 THE WITNESS: Yes, but the beneficiaries
7 also want the funds to be able to be distributed.
8 Because having the maximum amount of money in the Fund
9 without having a way of distributing it doesn't serve
10 the interests of the beneficiaries at all.

11 BY MR. KIESEL:

12 Q. You would agree it depends, really, on the
13 value of the funds being paid to the union versus the
14 union -- the Fund's ability to make the payments to the
15 beneficiaries is a factor in determining whether or not
16 Fund dollars given to someone else is an appropriate
17 transfer of that money?

18 MR. THOMAS: Objection. Vague. Ambiguous.

19 BY MR. KIESEL:

20 Q. Hypothetic -- let me get you to answer that.
21 I'll give you a hypothetical.

22 A. I mean, if we -- if we imagine for a moment
23 that the other party that the -- the Fund was trying to
24 get data from was a for-profit business of its own out
25 there and the Fund was seeking to get data that that

1 entity had and that it needed, then the Fund would, I
2 presume, enter into an agreement with that entity and
3 would expect to pay the reasonable value of the
4 services or data or whatever that it was seeking to
5 acquire from that other organization.

6 So I guess I'm not really understanding -- I
7 mean, I don't think the beneficiaries of the Fund or
8 the trustees of the Fund expect that they would be able
9 to get services provided to the Fund for free as a way
10 of maximizing the -- the amount of money distributed to
11 the beneficiaries of the Fund.

12 BY MR. KIESEL:

13 Q. But if you were a nonunion beneficiary of
14 the Fund, you would agree that paying money to the
15 union is not benefiting the nonunion beneficiary of the
16 Fund; right?

17 A. I do not agree with that at all. In fact, I
18 categorically reject that statement.

19 Q. Okay. So how does the nonunion beneficiary
20 benefit from the information provided from the union to
21 the Fund?

22 A. Well, first of all, the union maintains data
23 on nonmembers of the union, including things like their
24 whereabouts, how to contact them, the information
25 needed to actually make payments to them. So that's

1 paid for it instead of leaving my money tied up in a
2 pool while someone tried to figure out that it was -- I
3 was entitled to it and that it should be paid to me.

4 I don't understand why anyone would object
5 to that, the fact that the union is providing the data
6 as opposed to some other party providing the data. The
7 bottom line is if you want to receive your royalty
8 distributions, you want the data to be provided and you
9 want it to be provided in as efficient and quick a
10 manner as possible so that money gets into your pocket.

11 BY MR. KIESEL:

12 Q. Now, the Fund has a research team in place,
13 a full-time staff; right?

14 A. Yes. Yes, we --

15 Q. The Fund has -- pardon.

16 So the Fund has an ability itself to do
17 research independent of the union to try to identify
18 beneficiaries to the funds?

19 A. Yes, it does.

20 Q. And those costs associated with the direct
21 employees from the Fund are withdrawn from the total
22 amount available to be distributed to the
23 beneficiaries. The administrative costs and the funds
24 are taken out; right?

25 A. Right. So they're part of the

1 Misstates his testimony.

2 THE WITNESS: You know, I was concerned that
3 it could be moving in that direction, and I wanted to
4 be out ahead of the issue. So I did want us to take a
5 look at that. And I think more so than me feeling
6 those numbers were, you know, unjustifiable or whatever
7 because I -- I don't think that; I think those numbers
8 are justifiable -- I was concerned that if we didn't
9 make a structural change to the formula, that as
10 streaming continued to grow and grow, as I expected it
11 to do, that we might enter into a territory that was of
12 concern. So I wanted us to be out ahead of it and to
13 consider whether there was any kind of change that was
14 needed to keep it sort of aligned with a reasonable
15 standard.

16 BY MR. KIESEL:

17 Q. As you sit here today, in 2021, is it your
18 view that the 3 percent is still aligned with a
19 reasonable standard for funds going to the union from
20 the Fund?

21 A. As of today, yes. Having said that, I also
22 am of the view that it would be wise for us to consider
23 putting additional parameters on the formula so that
24 additional growth in those numbers is constrained or
25 rationalized.

1 Q. So what -- what is it about the fact that
2 the Fund today is 450 percent larger than it was back
3 in 2014 that moved you to conclude it's still a
4 reasonable number today?

5 MR. THOMAS: Objection. Argumentative.

6 THE WITNESS: Well, I -- I say it's based on
7 my opinion about the amount of work that I believe is
8 required in order to provide the data resources that
9 the Fund needs, and I include in that all -- all stages
10 of the -- of the information gathering and sharing
11 process, as well as the other activities that the
12 unions engage in on behalf of the Fund. And I base
13 that, again, not only on their costs but also on the
14 value of those services as I perceive them.

15 And so from my perspective, at the -- you
16 know, at the time we entered into the agreement, it's
17 arguable that the percentage worked out to undervalue
18 the resources that were being provided to the Fund. I
19 don't assume that at that time that was a full
20 accounting for all of the value and cost of the
21 services and data that was provided. So I think we're
22 still within that reasonable bounds at this point.

23 But I also acknowledge that, you know, if
24 over the next eight years the pattern of growth and
25 streaming were to continue the way it has over the last

1 extent he can provide an estimate on the fly here, you
2 know, you're welcome to ask him about it.

3 MR. KIESEL: Sure. The -- the witness --
4 the -- the witness used the expression the amount of
5 time -- "the amount of work required." Those were his
6 words, "the amount of work required." And the
7 3 percent being a reasonable fee.

8 And I really want to just get a sense from
9 this witness, as he uses the term "the amount of work
10 required," what goes into that statement. Because it's
11 a broad statement. But I need to understand what words
12 go into it for him to feel comfortable that the
13 percentage the -- the union is getting is a reasonable
14 amount. That's all.

15 THE WITNESS: So I -- I -- let me just
16 state -- I mean, I wouldn't base that on sort of trying
17 to calculate what the amount of hours are per person or
18 even in the aggregate because that's going to vary by
19 year, and I would need to do all kinds of research to
20 find out the answer to that.

21 But what I do know and I would love to share
22 is there are various steps that have to be carried out
23 by human beings throughout the course of the process of
24 bringing someone from being a new entrant into the
25 industry to someone collecting royalties from the Fund.

1 And among those processes are us onboarding them either
2 as a member or as a nonmember fee payer or as someone
3 who's in our database as a complete non- -- you know,
4 unrelated to the institution but that we have on file.

5 That information all has to be, you know,
6 solicited, received, entered into data processing
7 systems, categorized, et cetera, and then it has to be
8 provided to the Fund.

9 Then there's obviously the stage in which
10 someone is actively recording. That means that now
11 session forms are being created, if they're working on
12 covered projects or B forms. Those have to then be
13 processed, filed and accessed through the union. That
14 all requires human time.

15 Then there's obviously the process of
16 actually responding to requests from the Fund because
17 those are not all an automated process. So that's a
18 human being's time to go and identify, locate, find the
19 information, provide it back.

20 Then there's, of course, the other aspects
21 of the service fee agreement that aren't included in
22 that process. So things like the time that we spent
23 lobbying for changes to the Music Modernization Act
24 that directly benefited the Fund and only the Fund at
25 the expense of the unions in terms of our time and

1 costs spent lobbying for them.

2 So I mean, there's a whole bunch of things.

3 And then all of that just ties into your question about

4 cost, but I just want to reiterate what I said before,

5 which is it doesn't factor in the question of the value

6 of the data in particular. That's independent of the

7 question of the incremental cost of gathering it.

8 BY MR. KIESEL:

9 Q. Did you understand that AFM and SAG-AFTRA
10 were being repaid for the creation of the Fund?

11 A. I know there were some comments made about
12 that by various people on the process. I've never seen
13 it that way because I don't think there's any way of
14 really quantifying or knowing all of the resources that
15 were invested in the Fund from its inception all the
16 way until 2013.

17 So from my perspective -- and -- and I don't
18 rule out anyone else's view on this -- but from my
19 perspective, that's not what I'm looking at. What I'm
20 looking at is what do I think the value, the cost and
21 value of the data and services that we're providing to
22 the Fund are and making sure that that's reasonable.

23 Q. Did you understand that the AFM and
24 SAG-AFTRA were being repaid for lobbying changes to the
25 US Copyright Act?

1 A. When --

2 MR. THOMAS: Objection. Vague and
3 overbroad.

4 THE WITNESS: Sorry.

5 When you say "repaid," do you mean from
6 periods prior to 2013, or do you mean for work that
7 we've been doing since the service fee agreement?

8 BY MR. KIESEL:

9 Q. Let's break it up. Initially, before, and
10 then after.

11 A. Before, I would just refer you to my
12 previous answer. I don't -- I do not view it as
13 repayment for funds expended prior to the entry into
14 force of the service agreement. I understand some
15 other people may have said that. I don't subscribe to
16 that view.

17 As far as post the service fee agreement,
18 yes, I do believe that that advocacy work is part of
19 what is called for by the service agreement; and it is
20 for that reason that SAG-AFTRA did not ask the Fund to
21 absorb any of the cost of the work that was done, for
22 example, on the Music Modernization Act to benefit the
23 Fund.

24 Q. Were a lot of the activities being done by
25 SAG-AFTRA and AFM work that the unions would otherwise

1 have done even if the Fund did not exist?

2 MR. THOMAS: Objection. Vague. And
3 overbroad.

4 THE WITNESS: Some of them may have been,
5 but the example I just mentioned to you twice is a
6 perfect example of one that was not. There would have
7 been no reason for us to lobby for those changes to the
8 Music Modernization Act other than to benefit the Fund.

9 BY MR. KIESEL:

10 Q. It's fair to say that the -- as you used the
11 term "the amount of work required," you've not done
12 a -- a -- a -- a -- a time -- use your words -- a time
13 and motion study to determine the actual hours that
14 went into that work; correct?

15 A. Correct.

16 Q. And as you sit here today, you still don't
17 think it's necessary to do a time and motion study to
18 determine the actual value -- actual cost of the
19 services provided by the unions to the Fund, given the
20 amount of money that's being paid to the funds --
21 strike that. I'm going to start the question again.

22 As you sit here today, it's your testimony
23 that a time and motion study need not be done to
24 further support the 3 percent service fee being paid
25 from the Fund to the unions at the present time;

1 overbroad.

2 THE WITNESS: My understanding is that it
3 was an effort that brought together the unions, so
4 AFTRA and AFM at the time, along with the record labels
5 to establish a mutually agreed approach to securing a
6 performance right in the noninteractive digital
7 transmission of performances.

8 BY MR. KIESEL:

9 Q. Okay. Were you involved in any effort to
10 amend 17 USC Section 114(g) at any point in time?

11 A. No.

12 Q. Were you involved in the efforts to pass the
13 Music Modernization Act?

14 A. Yes.

15 Q. Can you tell us what your involvement was
16 there?

17 A. My involvement was to support proposed
18 changes in the Music Modernization Act that would
19 establish and did establish a federal preemption of
20 state escheat laws as they apply to royalties that were
21 subject to distribution by the Fund and to deploy
22 resources on behalf of SAG-AFTRA to support that
23 effort.

24 Q. Okay. Are you aware if the Music
25 Modernization Act made any changes to

1 17 USC Section 114 relevant to the Fund?

2 A. I'm actually not sure, off the top of my
3 head, where that escheat preemption is codified, so I'm
4 not sure about that.

5 Q. Okay. I'd like to direct your attention now
6 to 17 USC 114(g)(2), Subsection B and C.

7 A. Yes.

8 Q. This language dictates how the royalties for
9 nonfeatured performers relevant to this case are to be
10 allocated and distributed; right?

11 A. Yes.

12 Q. These subjects both refer to an independent
13 administrator charged with managing the escrow accounts
14 for the royalties for nonfeatured performers are to be
15 deposited; correct?

16 A. Yes.

17 Q. Is it your understanding that the Fund
18 served as the independent administrator pursuant to
19 this subsection?

20 A. Yes.

21 Q. The subsections refer to the independent
22 administrator being, quote, jointly appointed by
23 copyright owners of sound recordings and the unions.

24 Who, to your knowledge, were the copyright
25 owners of sound recordings involved in so appointing

AGREEMENT AND DECLARATION OF TRUST

**AFM and SAG-AFTRA
Intellectual Property Rights Distribution Fund**

**Established
September 16, 1998**

**Amended and Restated
July 26, 2012**

THIS AGREEMENT AND DECLARATION OF TRUST is made and entered into as of the 16th day of September, 1998, and is amended and restated as of July 26, 2012, in the City of New York, State of New York, by and between the American Federation of Musicians of the United States and Canada, AFL-CIO-CLC ("AFM") and the Screen Actors Guild - American Federation of Television and Radio Artists ("SAG-AFTRA"), hereinafter jointly known as the Unions.

Preamble

WHEREAS, this Agreement and Declaration of Trust was originally established as of the 16th day of September, 1998, in the City of New York, State of New York, by and between the AFM and the American Federation of Television and Radio Artists ("AFTRA"); and

WHEREAS AFTRA merged with the Screen Actors Guild ("SAG") effective March 2012, and the merged unions are now constituted as SAG-AFTRA; and

WHEREAS, the Trustees now desire to amend and restate the Agreement and Declaration of Trust to reflect the merger of AFTRA into the merged union SAG-AFTRA, as well as to incorporate other amendments that the Trustees have made from time to time; and

WHEREAS, the Unions or their designated entities obtain and distribute to artists royalties and remuneration that are created by U.S. or foreign law and that are appropriate for collective administration; and

WHEREAS, the Unions have entered into a Reciprocal Agreement and an Annex for the Distribution of Record Rental Royalties Collected in Japan, pursuant to which they will receive and distribute record rental remuneration payable to non-featured instrumentalists and vocalists under the law of Japan; and

WHEREAS, the Unions have entered into other such agreements for the receipt and distribution of royalties or remuneration for the benefit of their members and other performing artists in the United States and Canada, and will continue to enter into such agreements; and

WHEREAS, to accomplish this purpose the Unions established a trust fund known as the AFM and AFTRA Intellectual Property Rights Distribution Fund for receiving and



distributing royalties and remuneration; and

WHEREAS, the trust fund formerly known as the AFM and AFTRA Intellectual Property Rights Distribution Fund shall now be known as the AFM and SAG-AFTRA Intellectual Property Rights Distribution Fund; and

WHEREAS, the Unions desire to restate the terms and conditions under which the said Fund is to be established and administered;

NOW, THEREFORE, in consideration of the premises, it is mutually understood and agreed as follows:

Article I
Definitions

Section 1. UNIONS. The term "Unions" as used herein shall mean the American Federation of the Musicians of the United States and Canada, AFL-CIO-CLC, and the Screen Actors' Guild – American Federation of Television and Radio Artists.

Section 2. AFM. The term "AFM" as used herein shall mean the American Federation of Musicians of the United States and Canada, AFL-CIO-CLC.

Section 3. SAG-AFTRA. The term "SAG-AFTRA" as used herein shall mean the Screen Actors Guild – American Federation of Television and Radio Artists, or, prior to March 2012, the American Federation of Television and Radio Artists.

Section 4. AGREEMENT AND DECLARATION OF TRUST. The term "Agreement and Declaration of Trust" as used herein shall mean this instrument including any amendments hereto and modifications hereof.

Section 5. FUND. The term "Fund" as used herein shall mean the AFM and SAG-AFTRA Intellectual Property Rights Distribution Fund.

Section 6. AGREEMENT FOR THE RECEIPT AND DISTRIBUTION OF REMUNERATION. The term "agreement for the receipt and distribution of remuneration" as used herein shall mean any agreement entered into by the AFM, SAG-AFTRA or the Unions with a collecting society, rights organization or other appropriate entity to receive royalties or remuneration held by that entity and to distribute such royalties and remuneration to eligible artists.

Section 7. ARTISTS. The term "artists" as used herein shall mean instrumental musicians and vocalists.

Article II
Creation of Fund

Section 1. ESTABLISHMENT OF FUND. The AFM and AFTRA Intellectual Property Rights Distribution Fund, which was established on September 16, 1998, is hereby amended and restated as the AFM and SAG-AFTRA Intellectual Property Rights Distribution Fund, to be used for the

purpose set forth in this Agreement and Declaration of Trust.

Section 2. GENERAL PURPOSE. The Fund shall be a trust fund and shall be used for the purpose of receiving and distributing royalties or remuneration to artists in accordance with such agreements for receipt and distribution of remuneration as are entered into by the Unions with the relevant collecting societies, rights organizations or other appropriate entities. The Fund shall further provide the means for financing the expenses of the Trustees and the operation and administration of the Fund, in accordance with this Agreement and Declaration of Trust. The Fund is intended to satisfy the requirements of section 501(c)(6) of the Internal Revenue Code and shall be construed in all respects consistently with section 501(c)(6).

Article III Trustees

Section 1. AFM AND SAG-AFTRA TRUSTEES. The operation and administration of the Fund shall be the joint responsibility of six Trustees, three appointed by the AFM, of which no fewer than one shall be a rank-and-file representative, and three appointed by SAG-AFTRA, of which no fewer than one shall be a rank-and-file representative.

Section 2. TERM OF TRUSTEES. Each Trustee shall continue to serve as such until his or her death, incapacity, resignation, or removal by the appointing Union. Each Union may remove or replace its Trustee at will.

Section 3. SUCCESSOR TRUSTEES. Each Union shall appoint its successor Trustees.

Section 4. FORM OF NOTIFICATION. In case any Trustee shall be removed, replaced, or succeeded, a statement in writing by the relevant Union shall be sufficient evidence of its action, when forwarded to the Fund and to the remaining Trustees. Any resignation shall be evidenced in writing and forwarded by registered mail to the Fund and the remaining Trustees, and shall not be effective for two months following the date of mailing unless a successor Trustee has been appointed.

Article IV Powers, Duties and Obligations of Trustees

Section 1. PROPERTY AND ASSISTANCE. The Trustees are authorized and empowered to lease or purchase such premises, materials, supplies and equipment, and to hire, employ and retain such legal counsel, investment advisor, administrative, accounting, actuarial, clerical and other assistants or employees as in their discretion they may find necessary or appropriate in the performance of their duties.

Section 2. CONSTRUCTION OF AGREEMENT. The Trustees shall have power to construe the provisions of this Agreement and Declaration of Trust and the terms used herein, and any construction adopted by the Trustees in good faith shall be binding upon the AFM, SAG-AFTRA, and artists claiming benefits under the Fund.

Section 3. GENERAL POWERS. The Trustees are hereby empowered, in addition to other such powers as are set forth herein or conferred by law:

- A. To establish and administer the Fund on behalf of artists who may be entitled to payments pursuant to agreements for the receipt and distribution of remuneration entered into by the AFM, SAG-AFTRA or the Unions and determined by the Trustees to be appropriate for administration by the Fund.
- B. As to each agreement for the receipt and distribution of remuneration recommended by the AFM, SAG-AFTRA or the Unions, to decide whether or not to administer the agreement through the Fund.
- C. As to each agreement for the receipt and distribution of remuneration which is to be administered through the Fund, to establish governing rules and procedures for the distribution that are consistent with the relevant agreement.
- D. As to each agreement for the receipt and distribution of remuneration which is to be administered through the Fund, to pay all expenses necessary to the establishment, administration and operation of the agreement out of the receipts generated by the agreement.
- E. To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Fund and do all acts as they, in their discretion, may deem necessary and advisable.
- F. To compromise, settle, arbitrate, and release claims or demands in favor of or against the Fund or the Trustees on such terms and conditions as the Trustees may deem advisable.
- G. To establish and accumulate as part of the Fund a reserve or reserves, adequate, in the opinion of the Trustees, to carry out the purposes of the Fund.
- H. To pay out of the Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Fund or any money, property, or securities forming a part thereof.
- I. To make appropriate allocations of common administrative expenses and disbursements shared or to be shared with any other Plan or Fund, or among the various agreements for the receipt and distribution of remuneration.
- J. To receive contributions, payments, distributions or transfers from any source whatsoever to the extent permitted by law.
- K. To establish advisory committees composed of AFM and SAG-AFTRA representatives and/or other artists or artists' representatives, and to set forth the duties and functions of the members of such advisory committees.
- L. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

- M. To establish such bank account or accounts as the Trustees deem necessary in their discretion, including escrow accounts pending the adoption of distribution rules governing the administration of an agreement for the receipt and distribution of remuneration.
- N. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective of distributing remuneration to eligible artists in the most efficient and economical manner.
- O. To purchase or obtain from the AFM, SAG-AFTRA, the AFM and Employers' Pension Fund, the AFTRA Health and Retirement Funds, the Phonograph Manufacturers' Special Payments Fund, the Motion Picture Special Payments Fund or any commercial source any data helpful for the identification and location of artists eligible for remuneration or the identification of recorded or other performances covered by an agreement for the receipt and distribution of remuneration.
- P. To invest the assets of the Fund with care, skill, prudence and diligence under circumstances then prevailing that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with such aims, without regard to state law restrictions on investments.

Section 4. COMPENSATION. The Trustees shall not receive compensation for the performance of their duties.

Section 5. PERSONAL LIABILITY. Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Fund contracted by them as Trustees, or for the non-fulfillment of contracts, but the same shall be paid out of the Fund and the Fund is hereby charged with a first lien in favor of such Trustee for indemnification for any amounts paid out by any such Trustee for any such liability and for indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own willful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

The Trustees and each individual Trustee shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of their duties so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own willful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any agent or attorney elected or appointed by or acting for the Trustees.

The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements contained therein.

Neither the AFM nor SAG-AFTRA shall in any way be liable in any respect for any of the acts, omissions or obligations of the Trustees, individually or collectively.

The Trustees may from time to time consult with legal counsel and shall be fully protected in acting upon such advice of counsel to the Fund as respects legal questions.

Section 6. BOOKS OF ACCOUNT. The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be audited at least annually by a certified public accountant selected by the Trustees. Such audits shall be available at all times for inspection by the AFM and SAG-AFTRA.

Section 7. EXECUTION OF DOCUMENTS. The Trustees may authorize and designate an employee or agent of the Fund to execute any notice or other instrument in writing.

Section 8. DEPOSIT AND WITHDRAWAL OF FUNDS. All moneys received by the Trustees hereunder shall be deposited by them in such bank or banks as the Trustees may designate for that purpose, and all withdrawals of moneys from such account or accounts shall be made only by checks signed by the Trustees, except that the Trustees may, in their discretion, designate and authorize an employee or agent of the Fund to sign checks upon such separate and specific bank account or bank accounts as the Trustees may designate and establish for such purpose.

Section 9. SURETY BONDS. The Trustees and any employees of the Trustees who are empowered and authorized to sign checks as aforesaid shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees. Each such employee employed by the Trustees who may be engaged in handling moneys of the Trust Fund shall also be bonded by a duly authorized surety company in the same manner. The cost of the premium on such bonds shall be paid out of the Fund.

Article V

Selection of Remuneration Systems to Be Administered by the Fund

Section 1. ACCEPTANCE FOR ADMINISTRATION THROUGH THE FUND. As to each agreement for the receipt and distribution of remuneration entered into by the AFM, SAG-AFTRA, or the Unions jointly, and referred by one of them to the Trustees for their consideration, the Trustees, in their sole discretion, may decide whether or not the agreement is appropriate for administration through the Fund. An agreement will be accepted for administration through the Fund only if the Trustees, voting in accordance with Article VII, Section 3, agree to accept it. The refusal of the AFM or SAG-AFTRA to accept an agreement for administration by the Fund shall not be subject to arbitration. The acceptance of an agreement for administration by the Fund shall be in writing.

Section 2. HOLDING MONEY PENDING ACCEPTANCE FOR ADMINISTRATION. The Fund may hold moneys received pursuant to an agreement for the receipt and distribution of remuneration in an escrow account pending the Trustees' decision whether to accept the agreement for administration through the Fund. If the Trustees refuse acceptance, the moneys will be returned with any interest accumulated thereon and minus any administrative costs incurred to the AFM, SAG-AFTRA or the Unions jointly in accordance with the agreement for the receipt and distribution of remuneration.

Section 3. CONTINUATION OF ADMINISTRATION. Once an agreement for the receipt and distribution of remuneration has been accepted for administration through the Fund, it shall continue to be administered through the Fund until such time as the Trustees, voting in accordance with Article VII, Section 3, agree that such administration is no longer appropriate. If the Trustees, voting in accordance with Article VII, Section 3, disagree over whether continued administration is appropriate, they will attempt to resolve their difference on the matter. If they cannot resolve their difference on the matter, they agree to submit the dispute to mediation administered by the American Arbitration Association. If mediation fails to resolve the dispute, the agreement for the receipt and distribution of remuneration shall be discontinued for administration through the Fund upon the vote of the Trustees for one Union, voting in accordance with Article VII, Section 3.

Article VI
Plan of Payments and Distributions

Section 1. PAYMENTS. The Trustees shall have full authority to determine all questions of the nature and amount of payments to be provided to artists consistent with the relevant agreements for the receipt and distribution of remuneration.

Section 2. ELIGIBILITY FOR PAYMENTS. The Trustees shall have full authority to determine eligibility requirements for payments, consistent with the relevant agreements for the receipt and distribution of remuneration, and to adopt rules and regulations setting forth the same, which shall be binding on the artists.

Section 3. METHOD OF PROVIDING PAYMENTS. The payments shall be provided and maintained by such means as the Trustees in their sole discretion shall determine.

Section 4. WRITTEN PLAN OF PAYMENTS AND DISTRIBUTIONS. The detailed basis upon which payments are to be made pursuant to each agreement for the receipt and distribution of remuneration shall be specified in writing by appropriate action of the Trustees subject, however, to such changes or modifications by the Trustees from time to time as they in their discretion may determine. All such changes or modifications shall similarly be specified in writing by appropriate resolution of the Trustees.

Section 5. DETERMINING CLAIMS FOR PAYMENTS. The Trustees shall have full authority to determine all claims for payments, provided that they may delegate to the duly designated administrators of the Fund authority to determine such claims initially. The administrators' initial determination shall be submitted to the Trustees for final determination. An individual who believes that he or she has been adversely affected by the administrators' or Trustees' determinations regarding payment of benefits may submit a written appeal to the Trustees. The decision of the Trustees shall be final.

Article VII
Meetings and Decision of Trustees

Section 1. MEETING OF TRUSTEES. Meetings of the Trustees shall be held at such place or places as may be agreed upon by the Trustees.

Section 2. ACTION BY TRUSTEES WITHOUT MEETING. The Trustees may also take action in writing without a meeting.

Section 3. AGREEMENT OF THE TRUSTEES. All actions of the Trustees shall be by agreement, with the AFM Trustees casting one vote, and the SAG-AFTRA Trustees casting one vote. In the event that any matter presented for decision cannot be decided because of a failure of agreement, the matter may be submitted for arbitration in accordance with Article VIII.

Section 4. MINUTES OF MEETINGS. The Trustees shall keep minutes of all meetings but such minutes need not be verbatim.

Article VIII
Arbitration

Section 1. APPLICATION OF THIS ARTICLE. A Trustee may apply to the American Arbitration Association in the area where the Fund maintains its principal office for the designation of an arbitrator who will decide any disputes between the Trustees or any other matter submitted to arbitration in accordance with the provisions of Article VII, Section 3. The decision of the arbitrator shall be final and binding. Decisions to accept an agreement for the receipt and distribution of remuneration for administration through the Fund, pursuant to Article V, Section 1, shall not be subject to arbitration.

Section 2. EXPENSES OF ARBITRATION. The cost and expense incidental to any arbitration proceeding, including the fee, if any, of the impartial arbitrator, shall be a proper charge against the Fund and the Trustees are authorized and directed to pay such charges.

Article IX
Execution of Trust Agreement

Section 1. COUNTERPARTS. This Trust Agreement may be execute in counterparts.

Article X
Amendment to Trust Agreement

Section 1. AMENDMENT BY TRUSTEES. This Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and annexed hereto. The Trustees shall have full discretion to fix the effective date of any amendment.

Article XI
Termination of Trust

Section 1. BY THE TRUSTEES. This Agreement and Declaration of Trust may be terminated by an instrument in writing executed by the Trustees when there is no longer in force and effect an agreement for the receipt and distribution of remuneration which is accepted for administration by the Fund.

Section 2. PROCEDURE ON TERMINATION. In the event of the termination of this Agreement and Declaration of Trust, the Trustees shall apply the Fund to pay or to provide for the payment

of any and all obligations of the Fund and shall distribute and apply any remaining surplus in such a manner as will in their opinion best effectuate the purpose of the Fund; provided, however, that no part of the corpus or income of said Fund shall be used for or diverted to purposes other than for the benefit of the artists eligible for benefits under the agreements for the receipt and distribution of remuneration administered by the Fund, or the administrative expenses of the Fund or other payments in accordance with the provisions of the Fund.

Section 3. NOTIFICATION OF TERMINATION. Upon termination of the Fund, the Trustees shall notify each necessary party, and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

Article XII

Miscellaneous Provisions

Section 1. GOVERNING LAW. This Agreement and Declaration of Trust shall be construed under the laws of the State of New York applicable to contracts made and to be performed within the County and State of New York (without regard to any conflict of laws provision), and venue for any dispute arising under this Agreement and Declaration of Trust shall be in New York.

Section 2. NOTIFICATION TO TRUSTEES. The address of each of the Trustees shall be that stated on the signature page of this Agreement and Declaration of Trust. Any change of address shall be effected by written notice to the Trustees.

Section 3. SEVERABILITY. Should any provision in this Trust Agreement or in the rules and regulations adopted thereunder be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the provisions contained therein unless such illegality shall make impossible or impractical the functioning of the Trust and the Plan, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

Section 4. VESTED RIGHTS. No artist or any person claiming by or through such artist, including the artist's family, dependents, beneficiary and/or legal representative, shall have any right, title or interest in or to the Fund or any property of the Fund or any part thereof except as may be specifically determined by the Trustees.

Section 5. ENCUMBRANCE OF PAYMENTS. No moneys, property or equity, of any nature whatsoever, in the Fund, or policies or benefits or moneys payable therefrom, shall be subject in any manner by any artist or person claiming through such artist to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

Section 6. EXPENSES OF THE TRUSTEES. All expenses of the Trustees incurred in the performance of their duties may be chargeable to the Fund at the discretion of the Trustees. All other expenses incurred pursuant to Article IV hereof shall be paid by the Fund.

Section 7. NO EMPLOYER CONTRIBUTIONS PERMITTED. The Fund shall not accept contributions from any employer or association of employers who employ artists represented by the AFM or SAG-AFTRA, and shall not enter into agreements for the receipt and distribution of remuneration with

such employers or associations of employers.

IN WITNESS HEREOF, in accordance with Article X, the Trustees sign this Agreement and Declaration of Trust, which amends and restates the original agreement and declaration of trust. The Trustees, by affixing their signatures at the end of this Agreement and Declaration of Trust, agree to accept the trusteeship and act in their capacity strictly in accordance with the provisions of this Agreement and Declaration of Trust.


Raymond M. Hair, Jr., AFM Date
1501 Broadway, Suite 600
New York, NY 10036

Duncan Crabtree-Ireland, SAG-AFTRA Date
5757 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90036

Sam Folio, AFM Date
1501 Broadway, Suite 600
New York, NY 10036

Stefanie Taub, SAG-AFTRA Date
5757 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90036

Bruce Bouton, AFM Date
1501 Broadway, Suite 600
New York, NY 10036



Jon Joyce, SAG-AFTRA Date
5757 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90036

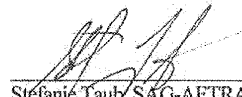
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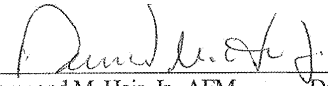
 11/13/12
Stefanie Taub, SAG-AFTRA Date
5757 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90036

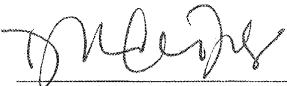
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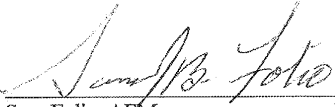
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Raymond M. Hair, Jr., AFM Date
1501 Broadway, Suite 600 11/15/12
New York, NY 10036

 1/16/13
Duncan Crabtree-Ireland, SAG-AFTRA Date
5757 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90036


Sam Folio, AFM Date
1501 Broadway, Suite 600
New York, NY 10036

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**Minutes
Meeting of the Trustees
AFM & AFTRA Intellectual Property Rights
Distribution Fund**

*Approved &
amended
12-12-13*

June 4, 2013

AFM & AFTRA Intellectual Property Rights Distribution Fund
11846 Ventura Blvd., Suite 300, Studio City, CA 91604

Trustees Present: Bruce Bouton, AFM
Duncan Crabtree-Ireland, SAG-AFTRA (Via Telephone)
Sam Folio, AFM
Raymond M. Hair, Jr., AFM
~~Jon Joyce, SAG-AFTRA~~ *Amended 12-12-13*
Stefanie Taub, SAG-AFTRA

Present: Dennis Dreith, Fund Administrator
Nancy Carney, Fund Controller
Shari Hoffman, Manager, Audio-Visual Division (Via Telephone)
Jo-Anne McGettrick, Manager, Sound Recording Division
Patricia Polach, Bredhoff & Kaiser, PLLC (Via Telephone)
Grant Miller, Miller, Kaplan & Arase
Doug Waite, Miller, Kaplan & Arase

The meeting convened at 4:05 p.m. (PDT) in person and via teleconference.

Minutes

The minutes of the July 26, 2012 meeting had been previously approved via e-mail poll.

Discussion of Studio Plaza Building

Following up on written material sent to the Trustees earlier, the Administrator presented information regarding the possible purchase of the Studio City Plaza building, a 38,000 square foot property located in Studio City. The building is available at a purchase price of \$9.9 million. The purchase price includes an adjacent parking lot valued at \$2.2 million, which is zoned to allow a 30,000 square foot building. There currently is a note of \$3.6 million on the building and parking lot which the AFM & SAG-AFTRA Fund could assume, reducing the initial cash outlay for the proposed purchase to \$6.3 million. The building itself is fully leased to 2016; thereafter, it would serve as the home of the Fund, which is currently out of rentable space and which will need expanded space in the near future.

The Administrator presented further information about the financial aspects of the possible purchase. The initial cash outlay for the purchase would come from the long-term investment account; i.e., the long-term investment fund would invest in the building. The Administrator projected that over the next three years, the rental receipts from the building

EXHIBIT

Crabtree-Ireland Ex. 3

exhibitstickers.com

should exceed the costs of owning the building (the mortgage and operating expenses) by approximately \$1.5 million per year. The Administrator anticipated that during or before 2016, the Fund would move in to the building (ultimately using one-third to one-half of the building) and pay a fair market value rent. The long-term investment account will be repaid from the net income derived from the building. The Administrator anticipated that the long-term investment account could be repaid within ten to twelve years, and that the Fund could be free of obligation after twelve to fourteen years (depending on the possibility of renegotiating the terms of the loan or loan buy-out with a reduced pre-payment penalty).

The Administrator reported that the purchase price is currently secured by a fully-refundable \$300,000 deposit. He further advised the Trustees that no inspection has been performed on the building as of today, but that he was in the process of scheduling an inspection and appraisal. He asked for the views of the Trustees as to whether to move forward with the building purchase.

Various issues relating to ownership of the building were discussed. The accountants from Miller, Kaplan & Arase suggested that the Fund should establish a separate corporation to purchase the building in order to protect the Fund and the unions from any liabilities. A question was raised as to whether the title holding company would be tax exempt as well. Representatives of Miller, Kaplan & Arase advised that the title-holding corporation is tax-exempt, but not as to the mortgage. Because the debt on the building would be approximately 37% of the value of the building, 37% of the rental income and appreciation from the building would be taxable while the building is not being used for Fund purposes. However, if the Fund grew to occupy 85% usage of the building, no income tax would be owed.

Mr. Hair asked for clarification regarding repayment of the long-term investment account. The Administrator reiterated that the Fund would be paid back from the receipts of the current leases, and, after the Fund occupied the new building, from the revenue generated from the continuing leases and from the rent paid by the Fund. The Administrator said that he anticipated that continuing leases would provide sufficient income to fully pay the Fund back for all the costs of the building.

Mr. Duncan Crabtree-Ireland explored the benefits of an LLC structure for the new corporate entity to hold the title to the building. He further expressed his support for establishing a separate corporation for the purpose of purchasing the building.

Privileged

Mr. Crabtree-Ireland moved that the Trustees approve the purchase of building, contingent upon receiving an appraisal at or over the purchase price, and contingent upon a favorable inspection of the building. Motion carried unanimously.

Budget:

The Trustees continued the discussion from the last meeting regarding the Fund practice of preparing "expense only" budgets. Doug Waite of Miller, Kaplan & Arase explained that the Fund's practice is not unique, and that in organizations such as the Fund where collections cannot be fully predicted or routinized, expense-based budgets are appropriate. He further explained that expense-based budgets must be formulated based on actual expenses, track records of collections and expenditures, and sufficient oversight to assure that overall revenue is sufficient to meet expenses. He said that the Fund could add revenue projections to its proposed budgets, but that doing so was not a requirement for formulating an appropriate proposed budget. He suggested that further discussions of this topic could be taken up with Fund Auditor Jeff Goss if desired.

The Administrator presented the Fiscal Year 2014 Proposed Budget, which anticipates a complete separation from the Film Musicians' Secondary Markets Fund during the fiscal year. As a result, it included additional office space, new hires, and the establishment of FMSMF Administrative Assistant Johanna Medrano, IT Manager, Robert Rusek and Facilities Manager Tom Freas moving to the AFM & SAG-AFTRA Fund as full time employees. It also included the addition of a full-time paid Administrator, beginning mid-fiscal year. The Administrator noted that, consistent with past discussions of the Trustees, it is anticipated that he would move into that position at such point as an orderly transition can be made from his position at FMSMF.

Mr. Folio asked for additional detail on the proposed salaries for Fund staff. Mr. Crabtree-Ireland expressed the view that details as to staff salaries other than the Administrator's salary should be delegated to the Administrator for decision, but agreed that a detailed report should be provided. The Administrator agreed to provide that detailed report.

It was agreed that the Trustees would schedule a separate teleconference to review the proposed salary of the Administrator.

The Trustees approved the Fiscal Year 2014 Proposed Budget, contingent upon the resolution of the Administrator's salary in a subsequent meeting. It was agreed that Ms. Taub would arrange a meeting via teleconference for that purpose.

Future Distributions and Future Collections:

The Administrator informed the Trustees that he anticipated that the 2013 distributions would total about \$14 million, which will include a partial distribution of sound recordings (mostly DPR) for years 2009-2010 and approximately \$4 million in audiovisual royalties from AIE (the Spanish collective) from 2011 and 2012. He also reported that he projected collections in fiscal year 2014 of \$32 million, the bulk of which will come from SoundExchange (including approximately \$4 million from foreign royalties), other foreign agreements, and an additional \$6 million from AIE for 2013 A-V royalties.

Administrative Fee:

A discussion ensued regarding the Fund entering into a service agreement with the American Federation of Musicians and SAG-AFTRA for ongoing support including membership

data and other information and services to assist in facilitating distributions. It was moved, seconded and carried that the Fund enter into a service agreement with the two unions, pursuant to which the unions would provide information and services important to the Fund, and the Fund would pay a service fee consisting of an amount equal to 3% of each distribution (after the deduction of administrative fees), with one-half payable to the AFM and one-half payable to SAG-AFTRA.

The staff and MKA guests were excused. A discussion ensued with the Administrator regarding his leaving his position at the FMSMF and devoting his full time to the AFM & SAG-AFTRA Fund.

The meeting adjourned at 6:30 p.m. PDT.

Exhibit 3

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4 KEVIN RISTO, on behalf)
of himself and all others)
5 similarly situated,)
)
6 Plaintiffs,)
)
7 vs.) Case No. 2:18-cv-
) 07241-CAS-PLA
8 SCREEN ACTORS GUILD-AMERICAN)
FEDERATION OF TELEVISION AND)
9 RADIO ARTISTS, a Delaware)
corporation; AMERICAN FEDERATION)
10 OF MUSICIANS OF THE UNITED STATES)
AND CANADA, a California)
11 nonprofit corporation; et al.,)
)
12 Defendants.)
_____)

13

14

15

16 30(b)(6) DEPOSITION OF SAG-AFTRA

17 DUNCAN CRABTREE-IRELAND

18 CONDUCTED VIRTUALLY

19 WEDNESDAY, FEBRUARY 17, 2021

20 1:03 p.m.

21

22 Job No. 269209

23 Pages: 101

24 Reported by: Lorie Rhyne, CSR, RPR, CRR

25 Appearing remotely from San Diego, California

1 us Section B.

2 A. Sure. B. Organizing workers in the
3 entertainment and media industries in order to maximize
4 our bargaining strength.

5 Q. So what [sic] does SAG-AFTRA use "workers"
6 here instead of "members"? Do you see that?

7 A. Yes.

8 Q. Is there a reason why it's using "workers"
9 and not "members"?

10 A. Yes. Because this particular piece of the
11 objectives is, in part, referring to going into
12 nonunion workplaces and organizing them, and the
13 workers in those nonunion workplaces would typically
14 not yet be members of the union.

15 Q. So you would agree the union's objective
16 here is broader than helping actual union members?

17 A. Yes.

18 Q. Would nonfeatured performers qualify as
19 workers in the entertainment and media industry, as
20 used here?

21 A. Yes.

22 Q. Okay. Let's go to Section C and have you
23 read Section C for us.

24 A. Sure. C. Increasing our power in dealing
25 with the various governmental bodies that address the

1 significant public policy issues confronting our
2 members.

3 Q. So what does the union mean here, if you
4 know?

5 A. It means to take the necessary steps to have
6 the maximum power and influence with respect to
7 advocacy -- issue advocacy for issues that affect
8 members of SAG-AFTRA.

9 Q. So what sorts of activities does the union
10 employ in service of these goals?

11 A. By "these goals," you mean specifically C,
12 or you mean --

13 Q. No; C in particular.

14 A. C in particular. Well, for example, we
15 engage in member outreach where we inform members about
16 various policy issues. We do educational activities,
17 as well as engagement activities where we encourage
18 members to reach out to local, state, federal
19 government officials to urge them to take certain
20 actions. We employ lobbyists to -- to advocate on
21 behalf of those issues with governments at all levels,
22 and even internationally.

23 And I do want to just note, however, we are
24 nonpartisan; so none of that includes any kind of
25 campaign contributions to candidates or any candidate

1 endorsements.

2 Q. Perfect. Thank you for that.

3 Okay. Let's turn to Section E, and let me
4 have you read for us Section E, please.

5 A. Sure. E. Cooperating, coordinating and
6 combining with other organizations whose objectives
7 include the advancement and improvement of members'
8 compensation and working conditions whenever such
9 action is in the best interest of our members.

10 Q. So what example of organizations whose
11 objectives include the advance [sic] and improvement of
12 members' compensation and working conditions are there?

13 A. Probably quite a few. Do you want me to
14 just give you a few?

15 Q. Yeah, please.

16 A. The AFL-CIO would probably be the Number 1
17 on that list where we, you know, collaborate with other
18 unions in the labor movement to try and effectuate
19 change that advantages our members.

20 An example that you might find more targeted
21 to this case would be the musicFIRST alliance, which is
22 an alliance of la- -- record labels and unions and
23 performer organizations that is committed to the effort
24 to achieve a terrestrial broadcast performance right in
25 the United States. Those are a couple of examples. If

1 you want, I can keep trying to think of some more.

2 Q. No; that's good. So yesterday I asked you
3 if it would be fair to say that one of the purposes of
4 the Fund was to either work to improve royalty
5 compensation for beneficiaries or advance their
6 interests, and you said yes to that question; correct?

7 A. Yes.

8 Q. So if the Fund were not paying SAG-AFTRA the
9 service fee, wouldn't SAG-AFTRA's constitution still
10 support provisions providing the data to the Fund for
11 compensation to its members?

12 A. I certainly think that some of the
13 activities that we would engage in would be supported
14 by these objectives regardless of whether the Fund was
15 wanting us to do them or cooperating in paying for the
16 cost of doing them.

17 There are some activities that wouldn't, and
18 the biggest example of that would be the -- or the most
19 easily thought of example of that would be the
20 provisions I mentioned to you yesterday regarding the
21 Music Modernization Act and the escheat preemption
22 provisions because I don't see how lobbying for those
23 provisions would fit into these objectives, since it's
24 purely for the benefit of the Fund.

25 Q. But on the other hand, it's the benefit of

1 work together in a coalition to try and achieve goals
2 that are important to all of them, there is some kind
3 of appropriate division of the costs and efforts that
4 are associated there. It's not a -- E is not a license
5 for other organizations to freeload on SAG-AFTRA. E is
6 an indication that we want to work collaboratively and
7 do our fair share, just like the Fund should do its
8 fair share of paying for the costs of those efforts.

9 Q. Understood. All right. Let's go to
10 Section G and have you -- well, highlight Section G and
11 then have you read that for us?

12 A. Sure. G. Receiving, administering and
13 expending the union's funds in the interests of our
14 members.

15 Q. So does the Fund benefit the interests of
16 SAG-AFTRA members?

17 A. I believe so.

18 Q. If SAG-AFTRA were losing money helping the
19 Fund, would that be consistent with its objectives?

20 A. It would depend on what the purpose of
21 losing the money would be and what alternatives there
22 were to losing the money. I think it's a -- it's a
23 little bit of a complicated question, but, again, I
24 mean, clearly part of our -- I mean, what we do with
25 the money that we raise for member dues and initiation

1 fees, et cetera, is use them to advance the interests
2 of the members. But it also needs to be done in a
3 manner that's equitable so that, you know, in the
4 totality of the circumstances, the resources are used
5 appropriately and -- and that we're not subsidizing
6 outside organizations to an extent that's not
7 warranted.

8 Q. Got it. If SAG-AFTRA were expending its own
9 resources to help the Fund, would that still not be in
10 the interest of its members?

11 A. It could be.

12 MR. THOMAS: Objection. Vague.

13 THE WITNESS: It could be.

14 BY MR. KIESEL:

15 Q. Let's go to I. And we'll highlight I, and
16 then have you read that for us.

17 A. Sure. I. Without limitation, protecting
18 the rights of entertainment and media artists in all
19 other respects consistent with the overall objectives
20 of the union and doing all other things necessary and
21 proper to advance and promote their welfare and
22 interests.

23 Q. So would you agree that being part of
24 collective rights organizations and advocating for
25 nonfeatured performers falls in this objective?

1 testifying.

2 MR. KIESEL: Fair enough.

3 BY MR. KIESEL:

4 Q. And, in fact, it's -- it's -- it's fair
5 because it's -- under the total amount of membership
6 dues collected by the unions -- and that's a little bit
7 of a different question, but -- so let me just say
8 this: If you know in 2020, what were the total number
9 of membership in good standing?

10 A. In 2020 -- I'm just giving you an
11 approximate number because that number fluctuates every
12 single day depending on when people pay dues or
13 whatever -- but roughly, 160,000.

14 Q. And then how many are not active but just
15 awaiting removal?

16 A. At any given point, that could fluctuate at
17 anywhere between 40- to 80,000.

18 Q. Okay.

19 A. And I'm sorry. In that additional number,
20 I'm also including any members who aren't active but
21 may not be pending termination. For example, members
22 on honorable withdraw or suspended payment status,
23 things like that.

24 Q. Thank you. We know that the number for dues
25 for 2020 was 95 million; is that right? 95,000,910?

1 structure of the entity that is serving as the
2 independent administrator.

3 Q. Okay. As you mentioned yesterday, the
4 record industry does not appoint any officers from
5 their ranks to participate on the Fund; right?

6 A. Correct. Yes; that's right.

7 Q. Great. Let's move to Exhibit 5.

8 (Exhibit 5 was marked for identification.)

9 BY MR. KIESEL:

10 Q. And this is going to be the trust, the Fund
11 Trust Agreement. So let's now turn to the 2012 Fund
12 Trust Agreement. We discussed this document yesterday.
13 So I'm sure you're still familiar with what we talked
14 about. And we read yesterday, but I'm going to have
15 you read again, Article III, Section 1 and 2, if you
16 could read that into the record.

17 A. Sure. Section 1. AFM and SAG-AFTRA
18 Trustees. The operation and administration of the Fund
19 shall be the joint responsibility of six trustees,
20 three appointed by the AFM, of which no fewer than one
21 shall be a rank-and-file representative, and three
22 appointed by SAG-AFTRA, of which no fewer than one
23 shall be a rank-and-file representative.

24 Section 2. Term of Trustees. Each trustee
25 shall continue to serve as such until his or her death,

1 initiator of that idea?

2 A. I don't know.

3 Q. Was that your idea?

4 A. I don't believe so. I mean, to me, it seems
5 pretty obvious because it is a very big part of what's
6 being done by the unions then and now for the Fund.
7 But I don't believe I was necessarily the first to
8 articulate it.

9 Q. Okay. Do you think that the unions should
10 be paid annually for providing the data to the Fund?

11 A. I don't have a strong opinion about the
12 frequency of the payments. I think that the -- I do
13 feel strongly that the unions should be paid for the
14 services and data that they provide to the Fund.

15 Q. From the perspective of SAG-AFTRA, what was
16 the purpose of the service fee, now testifying as a
17 30(b)(6) witness?

18 A. The purpose was to ensure that the members
19 of SAG-AFTRA were not subsidizing the cost of operating
20 the royalty distribution efforts that the Fund was
21 engaged in. And to the extent that the union was
22 providing services to -- to the Fund, including data,
23 that was provided for that purpose that the Fund should
24 be paying for that rather than the members of
25 SAG-AFTRA.

1 or -- or state again that I was really more focused on
2 the question of what -- whether that would continue to
3 be appropriate if the revenues from streaming continued
4 to escalate the way they had done over the past
5 few years. So I really don't want to endorse any idea
6 that I thought or that I think the amount of fees
7 currently paid are excessive. I was really focused on
8 what happens if this streaming growth continues to
9 double and double and double year over year; that was
10 what I was concerned about.

11 Q. But I am correct that going back to 2013,
12 you considered but rejected the idea of a time and
13 motion study because of the expense associated with a
14 time and motion study given the revenue that was being
15 paid from the Fund to the union; correct?

16 A. Yes.

17 Q. In 2017 when the memo comes, there's a
18 continued discussion that we might need to reevaluate
19 the money that's coming to the unions based upon the
20 work the unions are performing and whether or not it's
21 a reasonable payment to the unions for the work they're
22 doing; correct?

23 MR. THOMAS: Objection. Misstates his
24 testimony.

25 THE WITNESS: I -- I mean, again, I was

Exhibit 4

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 CASE NO. 2:18-cv-07241-CAS-PLA
4 KEVIN RISTO, on behalf of himself
And all others similarly situated,
Plaintiffs,
vs.
5 SCREEN ACTORS GUILD - AMERICAN
6 FEDERATION OF TELEVISION AND RADIO
ARTISTS, a Delaware corporation;
7 AMERICAN FEDERATION OF MUSICIANS OF THE
UNITED STATES AND CANADA, a California
Nonprofit corporation; RAYMOND M.
8 HAIR, JR., an individual, as Trustee of
The AFM and SAG-AFTRA Intellectual
9 Property Rights Distribution Fund;
TINO GAGLIARDI, an individual, as
10 Trustee of the AFM and SAG-AFTRA
Intellectual Property Rights
11 Distribution Fund; DUNCAN;
CRABTREE-IRELAND, an individual, as
12 Trustee of the AFM and SAG-AFTRA
Intellectual Property Rights
13 Distribution Fund; STEFANIE TAUB,
an individual, as Trustee of the AFM
14 And SAG-AFTRA Intellectual Property
Rights Distribution Fund; JON JOYCE,
15 An individual, as Trustee of the AFM
And SAG-AFTRA Intellectual Property
16 Rights Distribution Fund; BRUCE
BOUTON, an individual, as Trustee
17 Of the AFM and SAG-AFTRA Intellectual
Property Rights Distribution Fund; and DOE
18 RESPONDING PARTY 1-10,
Defendants.

19 *****

20 CORRECTED TRANSCRIPT OF
ZOOM VIDEOTAPED DEPOSITION OF DENNIS DREITH
21 February 11, 2021
22 9:00 a.m.

23 REPORTED BY:

24 BELLE VIVienne, CRR,
25 JOB NO. 4420574

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VIDEOGRAPHER:

Terry Weiss

1 THE COURT REPORTER: Can we go 10:09:47
2 off the record? 10:09:48
3 MR. THOMAS: Sure. Do you want 10:09:51
4 to take a break? Let's go off the 10:10:03
5 record. 10:10:04
6 THE VIDEOGRAPHER: We're now 10:10:04
7 going off the record. The time is 10:10:05
8 10:10. 10:10:07
9 (Whereupon, a brief recess is 10:18:16
10 taken.) 10:18:25
11 THE VIDEOGRAPHER: We're now 10:18:25
12 back on the record. The time is 10:18:31
13 10:18. 10:18:33
14 BY MR. THOMAS: 10:18:33
15 Q. Mr. Dreith, did you have any 10:18:39
16 role in setting up the IPRDF, the fund? 10:18:40
17 A. Yes. 10:18:46
18 Q. What was your role in getting 10:18:47
19 that set up? 10:18:51
20 A. I -- it's a long explanation. I 10:18:57
21 was -- I had -- at the end of 1999, I had 10:19:02
22 taken over the film musician secondary 10:19:05
23 market fund as their administrator which 10:19:07
24 is the same as a CEO. And shortly after 10:19:10
25 assuming that position, I received a call 10:19:16

1 from Trish Polach and I believe Anne 10:19:19
2 Mayerson telling me that there had been 10:19:27
3 sort of a name-only fund established to 10:19:28
4 collect the digital royalties both 10:19:32
5 pursuant to the Audio Home Recording Act 10:19:35
6 and the Digital Millennium Copyright Act. 10:19:39
7 It was mentioned to me there was 10:19:44
8 a small amount of money and it -- they 10:19:45
9 were very desirous to do something to 10:19:51
10 distribute that money. The union, both 10:19:54
11 AFM and AFTRA, which established that 10:19:57
12 fund, were concerned about lawsuits. 10:20:03
13 There had been a number of lawsuits in the 10:20:03
14 industry about non- -- about collection 10:20:05
15 without distribution of royalties. And 10:20:08
16 SAG had been sued at that point, probably 10:20:11
17 the Director's Guild and maybe one or two 10:20:13
18 others had been sued, and the AFM were 10:20:17
19 concerned about it, and I was asked if I 10:20:21
20 could take a look at -- at what was there 10:20:22
21 and see if we just devise some sort of 10:20:25
22 mechanism to be able to effect the 10:20:28
23 distribution. 10:20:31
24 At that point I looked at the 10:20:34
25 finances. There was very little 10:20:36

1 documentation, but we decided we would try 10:20:40
2 to at least establish a fund to be able to 10:20:43
3 distribute these monies. I called Jo-Anne 10:20:45
4 McGettrick who was working for Sony Music 10:20:50
5 at the time, an old friend of mine who I 10:20:52
6 knew from the record business for many 10:20:55
7 years and had been assistant to the head 10:20:56
8 of ANR for a number of different 10:20:59
9 executives and was very knowledgeable in 10:21:02
10 the record industry. So I called Jo-Anne 10:21:04
11 and asked her if she would be willing to 10:21:07
12 take a job to help me put this fund 10:21:09
13 together. 10:21:12
14 She said yes. She, sometime in, 10:21:14
15 I think right around the beginning of 10:21:16
16 2000, came over, and we basically ran the 10:21:18
17 fund with Jo-Anne as its only employee and 10:21:22
18 allocated services from the Film Musicians 10:21:27
19 Secondary Markets Fund. So basically the 10:21:29
20 fund started with a -- a hand-me-down fax 10:21:32
21 machine, a computer we put together from 10:21:35
22 used parts, and a borrowed desk in the 10:21:38
23 corner of the Film Musicians Secondary 10:21:41
24 Markets Fund and began to try to put 10:21:44
25 together a computer system. We did the 10:21:46

1 Q. And an example of the foreign 10:25:54
2 territories would be the royalties that 10:25:56
3 you were getting from Japan, right? 10:25:57
4 A. Initially. 10:26:01
5 Q. Initially. And then later 10:26:03
6 other -- other foreign royalties; is that 10:26:04
7 right? 10:26:08
8 A. Correct, correct. 10:26:08
9 Q. What relationship did you 10:26:10
10 understand the fund to have with the -- 10:26:12
11 with the DMCA, with Section 114 of the 10:26:15
12 Copyright Act? 10:26:18
13 A. That there would be an 10:26:22
14 independent administrator established 10:26:23
15 under Section 114 to handle nonfeatured 10:26:25
16 performers' royalties. 10:26:30
17 Q. And who was that independent 10:26:31
18 administrator? 10:26:35
19 A. Would be named -- well, it was 10:26:38
20 going to be me. I was -- I was named as 10:26:42
21 the administrator, but the Copyright Act 10:26:44
22 basically revised it as I recall -- 10:26:46
23 revised that the union name that I think 10:26:52
24 to be specific the act itself says that 10:26:56
25 the unions and representatives of the 10:26:58

1 you know, very shortly before that, but 10:29:46
2 there may have been -- I believe the very 10:29:48
3 first payments that came actually came 10:29:50
4 from some of the labels. 10:29:52

5 Q. But by the early 2000s, 2002, 10:29:54
6 '3, '4 in there, SoundExchange was up and 10:29:58
7 running, and it was the entity that was 10:30:02
8 providing the Section 114 royalties to the 10:30:04
9 fund; isn't that right? 10:30:07

10 A. That is correct. 10:30:08

11 Q. Okay. The Audio Home Recording 10:30:09
12 Act royalties, those were coming from a 10:30:19
13 different source, were those coming from 10:30:20
14 the labels directly or from where? 10:30:22

15 A. Those were coming from the 10:30:25
16 copyright office. 10:30:30

17 Q. Okay. Got it, great. 10:30:31

18 A. And -- 10:30:34

19 Q. Go ahead, I'm sorry. 10:30:34

20 A. Okay there was kind of another 10:30:36
21 part of that from the copyright office. 10:30:38
22 But that also gave rise to the ability to 10:30:39
23 negotiate bilateral agreements to collect 10:30:42
24 private copy monies from foreign 10:30:44
25 territories. 10:30:46

1 Q. Okay. At the same time in 1999, 10:30:46
2 you said you had become the executive 10:30:55
3 director of the Film Musicians Secondary 10:30:58
4 Markets Fund; is that right? 10:31:01

5 A. That is correct, the technical 10:31:04
6 phrase was administrator. 10:31:05

7 Q. Administrator, okay. Did your 10:31:06
8 title at the Secondary Markets Fund ever 10:31:18
9 change or were you the administrator the 10:31:22
10 entire time until 2014? 10:31:24

11 A. I believe by that time they had 10:31:28
12 changed the title to executive director if 10:31:29
13 I'm not mistaken. 10:31:32

14 Q. Okay. And at the fund, the 10:31:32
15 IPRDF, your title initially was 10:31:36
16 administrator, right? 10:31:39

17 A. Yes. 10:31:40

18 Q. And then did that title change 10:31:41
19 as well to executive director or some 10:31:43
20 other title? 10:31:47

21 A. Executive director. 10:31:49

22 Q. Okay. And was it -- what was 10:31:50
23 the reason for that? 10:31:53

24 A. I think that the trustees felt 10:31:56
25 that it was more descriptive of what I was 10:31:59

1 systems had to be put in place to affect 10:34:33
2 the distribution, coordinate with computer 10:34:36
3 programmers, software developers to 10:34:39
4 develop the systems necessary, oversee the 10:34:41
5 staff, be basically a head of all the 10:34:45
6 departments. 10:34:50

7 It was a robust fund with a lot 10:34:50
8 of departments. There was an accounting 10:34:52
9 department and a IT department and a 10:34:54
10 compliance department and so on and so 10:34:59
11 forth. So my job -- -- my job was oversee 10:35:02
12 all those departments. 10:35:08

13 Q. Do you recall when you took the 10:35:10
14 job what the approximate size of the 10:35:14
15 Secondary Markets Fund was in terms of 10:35:20
16 number of employees? 10:35:22

17 A. We had employees in both L.A. 10:35:28
18 and New York at that point. Probably, I 10:35:31
19 would say combined maybe 15 employees or 10:35:37
20 so. 10:35:39

21 Q. And in terms of the amount of 10:35:40
22 residuals paid out every year, what was -- 10:35:44
23 what was the magnitude of that? 10:35:48

24 A. I believe when I took over at 10:35:55
25 the end of 1999, there was \$25 million a 10:35:57

1 year. 10:36:02

2 Q. Okay. All right. So you talked 10:36:03

3 a minute ago about sort of how you got the 10:36:06

4 job as administrator of the fund. And I'm 10:36:12

5 talking about the IPRDF now, our fund. 10:36:16

6 Specifically how were you hired? Was 10:36:20

7 there a board of trustees that hired you? 10:36:27

8 A. Yes. 10:36:31

9 Q. And did you have any discussions 10:36:32

10 about compensation at the time? 10:36:38

11 A. Yes. 10:36:42

12 Q. What was -- what was agreed on? 10:36:43

13 Were you going to receive any compensation 10:36:45

14 from the fund itself? 10:36:47

15 A. No. 10:36:49

16 Q. How were you going to be 10:36:49

17 compensated for your work as administrator 10:36:55

18 of the fund if at all? 10:36:57

19 A. I was basically donating my 10:36:58

20 services. It was a fund that had no money 10:37:01

21 and a great deal of potential and I 10:37:04

22 believed in it, and I took it over 10:37:05

23 basically as a -- you know, an 10:37:07

24 eleemosynary activity, I guess. A 10:37:12

25 charitable activity. 10:37:17

1 MS. McCONNELL: Mr. Thomas, 10:37:22
2 whenever is a good time, maybe we can 10:37:23
3 take a break. 10:37:27

4 MR. THOMAS: Great. And we'll 10:37:27
5 spell eleemosynary for everybody. 10:37:28

6 Just one or two more questions. 10:37:34

7 BY MR. THOMAS: 10:37:36

8 Q. When you agreed to take over the 10:37:36
9 job of administrator, and essentially 10:37:40
10 donate your services because you believed 10:37:45
11 in the fund, did you believe that by 10:37:48
12 agreeing to work out compensation 10:37:49
13 initially, you were binding yourself to 10:37:51
14 work without compensation forever at the 10:37:53
15 fund? 10:37:56

16 A. No. 10:37:56

17 Q. Did you anticipate that at some 10:37:59
18 point as the fund got on its feet, got 10:38:01
19 more robust, that it would be able to 10:38:04
20 compensate its administrator? 10:38:08

21 A. You know, I didn't really think 10:38:13
22 of it at that point. I really -- it was 10:38:14
23 too far down the road. My main concern 10:38:17
24 was to be able to get this up and running 10:38:19
25 and to see what would happen with it. 10:38:21

1 were not interested and had very little 11:15:55
2 sort of interest of what happened with the 11:15:59
3 5 percent share. It didn't really involve 11:16:01
4 their take. 11:16:04
5 Q. If you could please turn to 11:16:07
6 article IV. 11:16:12
7 MR. THOMAS: Do we have that? 11:16:26
8 BY MR. THOMAS: 11:16:27
9 Q. If you look at section 1, it 11:16:27
10 says -- the title -- article 4 is titled 11:16:29
11 Powers, Duties and Obligations of the 11:16:30
12 Trustees. Section 1 says Property and 11:16:32
13 Assistance. It says "The Trustees are 11:16:34
14 authorized and empowered to lease or 11:16:39
15 purchase such premises, materials, 11:16:40
16 supplies and equipment and to hire" -- and 11:16:46
17 it goes on to say staff, legal counsel and 11:16:50
18 so forth. 11:16:52
19 Is that a power that you felt 11:16:53
20 that the fund was authorized to -- to 11:16:57
21 exercise? 11:17:07
22 MS. McCONNELL: Objection, calls 11:17:08
23 for speculation, calls for a legal 11:17:09
24 conclusion, may call for expert 11:17:11
25 opinion. You can answer if you know. 11:17:12

1 A. My understanding was I was 11:17:18
2 engaged to carry that out. So in other 11:17:19
3 words, I'm authorized to do those things 11:17:23
4 subject to obviously review and approval 11:17:26
5 of the trustees. 11:17:29
6 BY MR. THOMAS: 11:17:33
7 Q. And while you were 11:17:33
8 administrator, did you exercise those 11:17:34
9 powers subject to approval of the 11:17:38
10 trustees? 11:17:40
11 A. Yes. 11:17:42
12 Q. You eventually hired more staff 11:17:42
13 and purchased more equipment and supplies, 11:17:45
14 right? 11:17:48
15 A. Yes. 11:17:50
16 Q. And at some point you separated 11:17:50
17 from the Film Musicians Secondary Markets 11:17:53
18 Fund and leased a building nearby; is that 11:17:55
19 right? 11:17:58
20 A. That's correct. 11:18:00
21 Q. The fund did, right? 11:18:01
22 A. Yes. 11:18:03
23 Q. And eventually the fund 11:18:03
24 purchased the building, correct? 11:18:05
25 A. That is correct. 11:18:08

1 them for each printer, but I would have a 11:23:26
2 budget to say the equipment I could buy, 11:23:28
3 for example. Before I could buy anything, 11:23:30
4 we have an annual budget. I would have to 11:23:32
5 get approval on the items, and then I 11:23:34
6 would have discretion within that. 11:23:36

7 Obviously, nobody told me what 11:23:37
8 style printer to buy, you know, what -- 11:23:40
9 what size, what capacity. If we had a 11:23:44
10 budget for X -- X dollars, I could spend 11:23:48
11 it on -- if I wanted to spend it on one 11:23:51
12 printer or four printers, as long as I did 11:23:53
13 it in a way that made sense and -- but was 11:23:56
14 within the budget, you know, I had a 11:23:59
15 budget to things, but it wasn't -- I 11:24:01
16 didn't have to, you know, you know, 11:24:03
17 justification of every paper clip. I 11:24:05
18 didn't have to -- you know, paper and 11:24:07
19 supplies, of course not, you know, but I 11:24:11
20 would have -- but they were all subject to 11:24:12
21 budget and review. 11:24:14

22 BY MR. THOMAS: 11:24:16

23 Q. Okay. And if we could turn to 11:24:16
24 the next item under section 3, General 11:24:18
25 Powers, this is item O. And this states 11:24:23

1 that, "The trustees are empowered to 11:24:29
2 purchase or obtain from the AFM, AFTRA 11:24:32
3 various other entities or any commercial 11:24:38
4 source any data helpful for the 11:24:43
5 identification and location of artists 11:24:46
6 eligible for remuneration or the 11:24:48
7 identification of recorded or other 11:24:52
8 performances covered by an agreement for 11:24:55
9 the receipt and description of 11:24:59
10 remuneration." Do you see that? 11:25:01
11 A. Yes. 11:25:03
12 Q. And do you understand that this 11:25:03
13 provision of the Declaration of Trust 11:25:05
14 authorized the fund to purchase data that 11:25:08
15 it -- that could be useful in identifying 11:25:14
16 and paying performers? 11:25:18
17 MS. McCONNELL: Objection, calls 11:25:20
18 for a legal conclusion, may call for 11:25:21
19 expert opinion, vague and ambiguous, 11:25:23
20 lacks foundation. You can answer. 11:25:25
21 A. Yes. 11:25:30
22 BY MR. THOMAS: 11:25:30
23 Q. In fact it authorizes them to 11:25:32
24 buy data from AFM and AFTRA among others, 11:25:34
25 right? 11:25:38

1 MS. McCONNELL: Same objection. 11:33:23

2 MR. THOMAS: I think I said 11:33:24

3 that the fund could exercise. 11:33:25

4 A. Yes. 11:33:32

5 BY MR. THOMAS: 11:33:32

6 Q. All right. I think we could put 11:33:55

7 this exhibit aside. I'd like to go back 11:33:56

8 to some of your testimony earlier 11:33:59

9 regarding the -- the early years of the 11:34:00

10 fund. 11:34:08

11 You mentioned that some of the 11:34:13

12 money started to come in from 11:34:18

13 SoundExchange in the early 2000s and -- 11:34:20

14 and initially some of the DMCA royalty 11:34:24

15 money came in from the labels themselves. 11:34:28

16 Do you -- do you recall that by 2006 the 11:34:33

17 fund was getting about a million dollars 11:34:38

18 in the DMCA royalties from SoundExchange? 11:34:40

19 A. I would have to look at the 11:34:45

20 revenue reports to give you an honest 11:34:53

21 answer. It's possible. It could be 11:34:58

22 correct. 11:35:00

23 Q. Generally speaking, do you 11:35:00

24 remember that it was gradually growing 11:35:02

25 during that period from maybe 2002 or '4 11:35:03

1 up until 2007 or '8? 11:35:07

2 A. Yes. 11:35:10

3 Q. And what obligations did you 11:35:14

4 understand the fund to have under Section 11:35:18

5 114 from the Copyright Act? 11:35:22

6 MS. McCONNELL: Objection, vague 11:35:24

7 and ambiguous, calls for speculation, 11:35:25

8 calls for a legal conclusion, may call 11:35:28

9 for an expert opinion. 11:35:29

10 A. My nonexpert opinion would be 11:35:32

11 that Section 114 really established -- 11:35:40

12 primarily established, you know, that 11:35:46

13 there would be an independent 11:35:48

14 administrator from our standpoint. 11:35:50

15 I mean, there's other aspects of 11:35:52

16 114 identifying, you know, the source of 11:35:54

17 revenue and those kinds of things, but my 11:35:58

18 opinion from my standpoint gave rise to 11:36:03

19 the existence of the independent 11:36:05

20 administrator and it set forth some -- set 11:36:07

21 forth some parameters for both the 11:36:21

22 establishment of the independent 11:36:23

23 administrator; it also set forth, you 11:36:25

24 know, some of the parameters of union 11:36:29

25 versus nonunion performers, how we had to 11:36:32

1 treat them equally. 11:36:36

2 And it had loosely, I guess -- 11:36:37

3 basically we just said we had to pay 11:36:44

4 nonfeature performers. It didn't identify 11:36:47

5 specifically the class of how that was to 11:36:49

6 be divided except for the percentages. 11:36:55

7 And it specified that we could -- there 11:36:57

8 could be certain administrative expenses 11:37:02

9 that could be borne by the independent 11:37:04

10 administrator. 11:37:08

11 BY MR. THOMAS: 11:37:08

12 Q. And the independent 11:37:08

13 administrator in this case is the fund, 11:37:09

14 right? 11:37:12

15 A. Correct. 11:37:12

16 Q. So, for example, it was up to 11:37:13

17 the fund to decide which recordings to 11:37:16

18 research and -- and distribute royalties 11:37:21

19 on, right? 11:37:24

20 MS. McCONNELL: Objection, vague 11:37:26

21 and ambiguous, may call for a legal 11:37:27

22 conclusion. 11:37:33

23 A. And so, I mean, I'm not sure 11:37:35

24 how -- how to answer that question. 11:37:37

25 The -- 11:37:39

1 BY MR. THOMAS: 11:37:40

2 Q. Let me back up. I'm sorry. I 11:37:40

3 think it might have been -- not been that 11:37:41

4 clear. 11:37:43

5 SoundExchange provided the 11:37:44

6 royalty money to the fund and also certain 11:37:47

7 information on an annual basis, right? 11:37:49

8 A. Initially on an annual basis. 11:37:54

9 Q. And thereafter on a more 11:37:57

10 frequent basis? 11:37:59

11 A. On a quarterly basis and then on 11:38:00

12 a monthly basis. 11:38:03

13 Q. Right. And can you generally 11:38:04

14 describe what that information is? 11:38:05

15 A. Well, what it was and what it is 11:38:10

16 has changed slightly. So what it was in 11:38:12

17 the beginning was -- would be a report 11:38:15

18 that would show basically what I would 11:38:19

19 call, like, a frequency report. In other 11:38:23

20 words, it showed how much each sound 11:38:25

21 recording had -- what its activity was. 11:38:28

22 So it showed the activity of a sound 11:38:32

23 recording in terms of its frequency of 11:38:35

24 use. So how many times it had done a 11:38:37

25 webcast or -- or a subscription service. 11:38:40

1 So there would be a weighted 11:38:44
2 formula. So there was two columns of 11:38:47
3 activity, webcasting and subscription 11:38:49
4 services. And then it also had -- it 11:38:51
5 included the name of the sound recording, 11:38:53
6 the artist, and the label. And that was 11:38:56
7 all they had in the beginning. 11:39:00

8 Gradually, they added release 11:39:02
9 year of that to that report, and then some 11:39:05
10 limited ISRCs were added to -- to that 11:39:16
11 report. But since that was incomplete 11:39:20
12 data, so that was on some recordings, not 11:39:23
13 others. And subsequently, as foreign 11:39:26
14 territories were added through some of the 11:39:29
15 bilateral agreements, some foreign royalty 11:39:31
16 payments, those were reported not 11:39:35
17 necessarily by sound recording specific 11:39:37
18 but, just by territory. In other words, 11:39:40
19 you with see a report that said X dollars 11:39:42
20 received from the Netherlands and what our 11:39:44
21 share of that would have been. 11:39:47

22 Q. Okay. On this frequency report, 11:39:48
23 during the, you know, pre-2010 period 11:39:53
24 let's say, do you recall approximately how 11:39:57
25 many song titles might appear on the 11:39:59

1 had devised. But that was -- the first 11:47:05
2 one was probably -- the first draft of 11:47:06
3 that would have been around sometime in 11:47:08
4 2001. 11:47:10

5 Q. Okay. You described a situation 11:47:11
6 where there would be so many unique 11:47:21
7 recordings that were listed on the 11:47:26
8 frequency report from SoundExchange after 11:47:30
9 you sort of scrubbed out the duplicates 11:47:32
10 and so forth. There would still be too 11:47:35
11 many that it would be impossible to -- to 11:47:37
12 research them all, right? 11:47:39

13 MS. McCONNELL: Objection, 11:47:41
14 misstates prior testimony, vague and 11:47:41
15 ambiguous. 11:47:44
16 BY MR. THOMAS: 11:47:44

17 Q. I believe you said one reason 11:47:49
18 that you wouldn't be able to research them 11:47:51
19 all was because you just didn't have the 11:47:53
20 staff to do it, and the other was that 11:47:55
21 there might be de minimis situations where 11:47:56
22 the royalties due on a particular 11:48:00
23 recording were very, very low because it 11:48:02
24 didn't get very much air play, right? 11:48:04

25 A. To be clear, there's a number of 11:48:07

1 factors. One, we may have a group of 11:48:09
2 recordings that the amount of money is too 11:48:13
3 de minimis to really have a meaningful 11:48:17
4 distribution so we wouldn't research 11:48:19
5 those. There's also time constraints, 11:48:20
6 staff constraints. So it's a combination 11:48:23
7 of all those things. 11:48:26

8 I wouldn't want to say that it 11:48:26
9 was one or the other. I wouldn't want to 11:48:28
10 say that we didn't have enough staff to 11:48:30
11 research enough recordings. It's a factor 11:48:32
12 of staff, time, the amount of money that's 11:48:34
13 available. And so we had to re-devise a 11:48:36
14 methodology whereby we could efficiently 11:48:40
15 research enough sound recordings to make 11:48:44
16 distributions that were meaningful to as 11:48:46
17 many performers as possible. 11:48:48

18 Q. And I assume you considered that 11:48:54
19 to be a reasonable approach to dealing 11:48:56
20 with that -- those factors? 11:49:01

21 A. Yes. 11:49:04

22 Q. Did you -- did you consider it 11:49:05
23 to be consistent with Section 114 of the 11:49:07
24 Copyright Act? 11:49:09

25 MS. McCONNELL: Objection, may 11:49:11

1 call for a legal conclusion and an 11:49:12
2 expert opinion, may call for 11:49:13
3 speculation. You can answer. 11:49:16
4 A. I would say that Anne, Trish 11:49:20
5 Polach and I had a number of discussions 11:49:25
6 about that because I was initially 11:49:27
7 concerned in the SoundExchange basically, 11:49:29
8 has to identify everybody who has a 11:49:31
9 performance, and there's no distinction 11:49:36
10 about that. 11:49:38
11 The Copyright Act just talks 11:49:39
12 about nonfeatured performers as a group. 11:49:42
13 So it didn't really say that I had to -- 11:49:44
14 the -- the language didn't say to 11:49:48
15 distribute to every nonfeatured performer. 11:49:51
16 It just said I had to makes distributions 11:49:53
17 to nonfeatured performers. 11:49:56
18 I realize that's, kind of, 11:49:57
19 splitting hairs here. We're looking at -- 11:49:59
20 we're getting down in the weeds, but we 11:50:01
21 had a lot of discussions about that about 11:50:03
22 what those words actually meant and if it 11:50:04
23 really meant distributing to nonfeatured 11:50:06
24 performers if the -- if the -- if the act 11:50:09
25 had really meant every nonfeatured 11:50:13

1 people going further down the list, each 11:52:27
2 distribution, I certainly pushed the staff 11:52:30
3 to research more recordings and as long as 11:52:33
4 we weren't reaching into a de minimis 11:52:39
5 category, in other words, I didn't want to 11:52:42
6 spend more money to research and 11:52:44
7 distribute money on a recording and was 11:52:46
8 cost-effective. I didn't want to spend 11:52:48
9 more money to research a recording than 11:52:50
10 that recording actually gained, in other 11:52:52
11 words, taking money away from people and 11:52:54
12 not paying memory. 11:52:55

13 BY MR. THOMAS: 11:52:56

14 Q. Okay. Well, in this situation 11:52:56
15 where we described -- that we just 11:52:58
16 described where somebody that played on a 11:53:00
17 recording that was at the bottom of the 11:53:02
18 list and was not distributed on -- didn't 11:53:04
19 get any royalties on that recording, did 11:53:07
20 you -- did you believe that those 11:53:14
21 performers were being deprived of -- of 11:53:18
22 property that was -- that belonged to 11:53:21
23 them? 11:53:23

24 MS. McCONNELL: Objection, calls 11:53:24
25 for a legal conclusion, may call for 11:53:26

1 expert opinion, vague and ambiguous. 11:53:28

2 A. I think the best way I can 11:53:35

3 answer you is to say it was constantly my 11:53:37

4 goal to include as many performers as 11:53:39

5 possible and as many genres. We certainly 11:53:43

6 recognize that what happens you go down 11:53:47

7 that list a lot of things that were 11:53:49

8 different genres, you know, jazz, 11:53:51

9 classical music, chamber music, a lot of 11:53:56

10 those kind of things aren't as big of 11:54:00

11 money earners. 11:54:02

12 So unfortunately, they look at 11:54:03

13 it and they say, yeah, some of those 11:54:04

14 genres aren't monetizing the way that we 11:54:05

15 would otherwise wish they could. I wish 11:54:11

16 that I could pay everybody. And if I -- 11:54:11

17 if I could have, I would have tried to, 11:54:13

18 you know, allocate it and paid everybody. 11:54:15

19 But bear in mind some of those payments 11:54:17

20 would be micro-pennies. So we had to 11:54:19

21 really weigh the benefit to the largest 11:54:22

22 group possible. 11:54:23

23 And at some point, we would have 11:54:25

24 spent, you know, the certain -- the 11:54:29

25 administrative costs of trying to identify 11:54:30

1 every single micro-penny that was due 11:54:33
2 somebody would have been astronomical. 11:54:36
3 And so in my mind, that would not have -- 11:54:40
4 it certainly wouldn't have serviced the 11:54:44
5 community appropriately, and in many ways, 11:54:47
6 I don't believe that was the spirit of the 11:54:50
7 Copyright Act. 11:54:52
8 BY MR. THOMAS: 11:54:53
9 Q. What do you mean by that? 11:54:53
10 A. I meant that the spirit of it 11:54:55
11 was really to try to compensate as many 11:54:57
12 nonfeatured -- well, as many performers as 11:55:02
13 ethically and fully as possible. 11:55:07
14 Q. Okay. So just going back to the 11:55:10
15 research function that you described a few 11:55:22
16 minutes ago. What resources did the fund 11:55:24
17 consult to obtain information regarding 11:55:26
18 who performed on particular recordings? 11:55:30
19 MS. McCONNELL: One second. 11:55:35
20 Objection, vague and ambiguous. Just 11:55:37
21 at what particular time or just 11:55:38
22 generally? 11:55:40
23 MR. THOMAS: Let's talk about 11:55:41
24 the -- the time period from '99 up 11:55:42
25 until, say 2010. 11:55:49

1 MS. McCONNELL: Objection, 12:04:29
2 incomplete hypothetical, calls for 12:04:30
3 speculation. 12:04:32
4 A. I would say in some cases that's 12:04:42
5 true. 12:04:45
6 BY MR. THOMAS: 12:04:45
7 Q. And as I understand your 12:04:46
8 testimony in some cases the converse is 12:04:47
9 true, there may be more complete 12:04:51
10 information somewhere else. But is it -- 12:04:53
11 it is true, isn't it, that during this 12:04:57
12 time period and thereafter, you considered 12:05:01
13 the B forms and session reports to be at 12:05:03
14 least a valuable source of information to 12:05:06
15 aid the research function of the fund, 12:05:10
16 right? 12:05:11
17 MS. McCONNELL: Objection, calls 12:05:12
18 for speculation, vague and ambiguous. 12:05:14
19 You can answer. 12:05:16
20 A. Certainly I would say, you know, 12:05:17
21 a source of information, you know, and a 12:05:21
22 convenient source of some information, but 12:05:25
23 as I said, we really couldn't look at that 12:05:27
24 as the only source. And we looked at -- I 12:05:29
25 can say I looked at every source as 12:05:33

1 valuable. When we're looking at -- as the 12:05:35
2 business has changed over the years, if 12:05:37
3 you look at from 2008 to the present, we 12:05:40
4 see the industry's changed tremendously. 12:05:43
5 The advent of the urban market has 12:05:46
6 basically set the industry up on its ears. 12:05:49
7 So what -- when I made the first 12:05:52
8 distribution in say 2001, we had 90 -- 90 12:05:55
9 percent-plus union members, AFM and AFTRA 12:06:00
10 members on that distribution. When I left 12:06:07
11 in 2017 probably less than half were union 12:06:08
12 members. So we saw the business change. 12:06:14
13 So valuable -- I would say that every 12:06:15
14 source of information is valuable to me. 12:06:16
15 As we had to find more and more of the 12:06:19
16 nonunion people, certainly the websites 12:06:22
17 became only the source of information that 12:06:26
18 was reliable that we could really count on 12:06:28
19 to get every bit of information from. 12:06:30
20 And also we had to rely in -- 12:06:33
21 more and more on the direct contact with 12:06:35
22 producers, independent labels. So I don't 12:06:37
23 want to say that one source is more 12:06:42
24 valuable than the other. I want to say 12:06:45
25 every piece of information we get is 12:06:48

1 service fee idea to the board, are you 13:29:27
2 talking about a particular board meeting? 13:29:30
3 A. I'm sorry. I missed part of it 13:29:32
4 because you were turned away from -- 13:29:34
5 Q. I'm sorry. When you said that 13:29:34
6 Ms. Polach and Ray Hair and Duncan 13:29:35
7 Crabtree-Ireland presented the service fee 13:29:38
8 idea to the board of trustees, are you 13:29:42
9 referring to a particular board meeting? 13:29:44
10 A. Yes. It was at a particular 13:29:47
11 board meeting. I don't have that date 13:29:50
12 handy, but it was -- yeah. 13:29:51
13 Q. Is that the date when it was 13:29:53
14 voted on? 13:29:55
15 A. I believe it was the date that 13:29:55
16 it was voted on. 13:29:57
17 Q. And when -- was that the first 13:30:02
18 time you heard about it? 13:30:05
19 A. No. 13:30:06
20 Q. You -- you knew that it was 13:30:07
21 under consideration for some time before 13:30:10
22 that, right? 13:30:11
23 A. Not by the board of directors. 13:30:15
24 Q. Well, you understood that it was 13:30:17
25 a concept that eventually was going to be 13:30:22

1 presented to the board of directors, 13:30:24
2 right? 13:30:26
3 A. It was -- yes, it was presented 13:30:29
4 to me. I got a call from Trish Polach 13:30:31
5 saying that Ray and Duncan were interested 13:30:34
6 in a service fee and that she would be 13:30:38
7 working on a document that they would be 13:30:40
8 presenting to the board of directors. 13:30:42
9 Q. When do -- when was that phone 13:30:46
10 call, if you recall? 13:30:47
11 A. That started -- could have been 13:30:49
12 a month or two before the board meeting. 13:30:52
13 I don't recall the date. There were 13:30:54
14 ongoing discussions that we had about 13:30:56
15 that. The whole issue of a fee or a 13:30:58
16 service fee went back quite some time. 13:31:01
17 Almost from the time that Ray 13:31:05
18 became a trustee, he brought up several 13:31:09
19 times to me -- and I know others, but I 13:31:12
20 know to me several times -- that he felt 13:31:16
21 it was unfair that the unions had invested 13:31:18
22 a great deal of time and money and energy 13:31:20
23 to help pass the copyright law and 13:31:23
24 establish the fund, and that he felt that 13:31:26
25 the fund had all these resources and 13:31:28

1 A. I don't recall any. 13:44:03

2 Q. Did you ever convey to either 13:44:26
3 Ray Hair or Duncan Crabtree-Ireland that 13:44:29
4 you thought it was unjustified to pay any 13:44:32
5 form of ongoing service fee to the unions? 13:44:35

6 A. I raised a number of points to 13:44:40
7 the board. Not to him directly. We had 13:44:52
8 some discussion on the board meeting where 13:44:55
9 the service fees were voted on. I will 13:44:58
10 say that before that, there were 13:45:02
11 numbers -- different percentages that had 13:45:05
12 been proposed. At one point I believe 13:45:07
13 Trish said something like 10 percent, and 13:45:10
14 I reacted pretty strongly to that, saying 13:45:11
15 that would be far in excess of anything 13:45:15
16 that would be sort of acceptable under our 13:45:19
17 bilateral agreements. 13:45:21

18 That was modified to 5 percent 13:45:23
19 at the board of directors meeting, and 13:45:26
20 while I didn't speak directly to the issue 13:45:29
21 whether it was going to be ongoing, it 13:45:32
22 seemed to me it wasn't -- I didn't have a 13:45:35
23 vote. I didn't get anything to decide. 13:45:38
24 At that point it wasn't a matter that I 13:45:40
25 felt that it was appropriate or fair that 13:45:43

1 they were going to do this, but what I 13:45:45
2 wanted to do at that point at least was 13:45:47
3 sort of mitigate the cost as much as I 13:45:50
4 could and I had to point out to them that 13:45:52
5 even -- if they were looking at something, 13:45:55
6 you know of a higher percentage, they were 13:45:58
7 looking at 1.5 percent and -- and, you 13:46:01
8 know, I did point out to them that the -- 13:46:07
9 the -- at 5 percent, we would be higher 13:46:13
10 than the amount that we agreed to under 13:46:16
11 different bilateral agreements. 13:46:20
12 The norm of the foreign 13:46:21
13 societies have requirements in their EU 13:46:23
14 law how much we can charge in 13:46:26
15 administrative expenses, and our bilateral 13:46:31
16 agreements had to be matched to theirs for 13:46:33
17 collection of foreign royalties so. I did 13:46:36
18 point out that to have a higher 13:46:38
19 administrative fee would put us above the 13:46:42
20 allowable amount. 13:46:45
21 And there may have been some -- 13:46:46
22 I do remember an e-mail I might have 13:46:48
23 written to Trish Polach at this at one 13:46:50
24 point. I don't remember the exact e-mail, 13:46:52
25 but I'm pretty sure that at one point, 13:46:54

1 there was some correspondence between 13:46:57
2 Trish and myself, and possibly between 13:46:59
3 Trish, Duncan, and myself leading up to 13:47:02
4 the board meeting just about the service 13:47:05
5 fee that they were going to propose. And 13:47:07
6 I do know at that time, I raised issues 13:47:10
7 about the size of the fee. 13:47:14

8 Q. Do you ever propose a percentage 13:47:17
9 of what the fee should be? 13:47:24

10 A. I did suggest that the 5 percent 13:47:29
11 was too high and somebody asked me on the 13:47:33
12 board, possibly Duncan, I think, asked me 13:47:36
13 well, what would be a percentage that 13:47:41
14 would keep us at or below the threshold to 13:47:43
15 not trigger a problem with the foreign 13:47:47
16 CMOs. And I had said at that point, I 13:47:50
17 believe 3 percent would keep us at the 13:47:54
18 threshold at or below that point. 13:47:56

19 Q. And what was the nature of the 13:48:00
20 agreement -- the bilateral agreements with 13:48:04
21 the foreign CMOs that you're referring to 13:48:06
22 that would have limited the amount of the 13:48:10
23 fee? Was it a provision that had to do 13:48:12
24 with overall overhead expense? 13:48:14

25 A. Yes, generally speaking, each of 13:48:22

1 the bilateral agreements, whether -- 13:48:24
2 they'll have some provisions that are 13:48:27
3 different. Almost all of them have 13:48:29
4 certain basically standard form agreements 13:48:31
5 that conform with either EU policy or, in 13:48:33
6 some cases, actual statute. 13:48:38
7 Most of those have provisions, 13:48:40
8 for example, that says you can't charge a 13:48:42
9 foreign performer a higher administrative 13:48:45
10 fee than you charge your own performers. 13:48:52
11 And many will have a limit in terms of 13:48:54
12 what the overall administrator's fees can 13:48:57
13 be. So they'll set a ceiling -- 13:49:00
14 oftentimes they'll have a clause that says 13:49:02
15 you can charge a higher fee, but it has to 13:49:04
16 be justified. You have to come back to 13:49:07
17 the foreign CMO and explain why it's going 13:49:09
18 to be higher and demonstrate like a, you 13:49:13
19 know, what costs lead to that. And the 13:49:15
20 notion of the higher fee would be somehow 13:49:23
21 documented and somehow that you were 13:49:26
22 incurring some costs that you hadn't 13:49:30
23 anticipated just something in the 13:49:33
24 administration of the agreements. 13:49:34
25 Q. So was your concern then that if 13:49:36

1 the fund began paying a 5 percent service 13:49:40
2 fee to the unions that it would cause the 13:49:45
3 overall expense ratio of the fund to climb 13:49:48
4 so high that the fund would be in 13:49:50
5 violation of these bilateral agreements; 13:49:52
6 is that the concern? 13:49:54

7 A. That was one of my concerns. 13:49:56

8 Q. Well, let me just ask about that 13:49:58
9 then. Do you remember at this time 13:50:01
10 2012/2013 what the expense ratio of the 13:50:03
11 fund was? 13:50:06

12 A. I believe it was around 7 13:50:08
13 percent at that time. 13:50:11

14 Q. And isn't it true that the 13:50:12
15 foreign collecting societies often had 13:50:24
16 expense ratios that were much higher than 13:50:26
17 7 percent? 13:50:30

18 A. Ask me one more time. 13:50:32

19 Q. Wasn't it -- was it true that at 13:50:33
20 that time, the foreign collecting 13:50:35
21 organizations had expense ratios that were 13:50:36
22 much higher than 7 percent? 13:50:39

23 A. Some did, but that also 13:50:44
24 precluded them to -- some of them did have 13:50:46
25 a higher fee than that, but that also made 13:50:52

1 Yes. 15:02:00

2 MS. LYONS: Yes, this is the 15:02:01

3 e-mail and the attachment. 15:02:03

4 MR. THOMAS: And this is Exhibit 15:02:06

5 117? 15:02:07

6 MS. LYONS: Yes, that's correct. 15:02:08

7 MR. THOMAS: Okay. Sorry for 15:02:10

8 the confusion there. 15:02:11

9 BY MR. THOMAS: 15:02:12

10 Q. Mr. Dreith, this is an e-mail 15:02:12

11 dated January 25, 2013. It's from you to 15:02:13

12 Ray Hair and Duncan. And I'm not going to 15:02:19

13 read the whole e-mail to you, but if you 15:02:29

14 read the first few lines -- 15:02:31

15 A. Okay. 15:02:33

16 Q. -- you are having a conversation 15:02:33

17 it looks like about your -- the overall 15:02:36

18 expense ratio of the fund, right? 15:02:39

19 A. Uh-huh. 15:02:43

20 MS. McCONNELL: Dennis, if you 15:02:44

21 want to take a few seconds to read it, 15:02:45

22 go ahead and do it. 15:02:47

23 BY MR. THOMAS: 15:02:48

24 Q. Yes, please take as much time as 15:02:48

25 you want. 15:02:50

1	A.	Okay.	15:04:06
2	Q.	So in January of 2013, this is	15:04:06
3		still before the meeting where the	15:04:09
4		trustees voted on this service fee, right?	15:04:11
5	A.	I'm assuming it is. I don't	15:04:17
6		know -- I see that the e-mail is	15:04:20
7		January 25. So yeah, it makes sense, it	15:04:22
8		would be, yeah.	15:04:28
9	Q.	The trustee meeting where the	15:04:30
10		service fee was voted on was actually in	15:04:32
11		June of 2013; isn't that right?	15:04:35
12	A.	I -- if you say so. I don't --	15:04:37
13		I'm not looking at the dates here. I	15:04:41
14		couldn't tell.	15:04:42
15	Q.	Okay. At the time of this	15:04:43
16		e-mail, do you recall whether an agreement	15:04:49
17		had been reached on a 3 percent service	15:04:52
18		fee or was that still unresolved?	15:04:54
19	A.	I don't think it was reached. I	15:04:58
20		think that was unresolved.	15:04:59
21	Q.	If you read down, maybe it's	15:05:02
22		three-fourths of the way down, there's a	15:05:04
23		sentence that starts on the left margin	15:05:07
24		that says "I understand that this may make	15:05:09
25		it more difficult."	15:05:11

1 Do you see that? 15:05:12

2 A. Uh-huh. 15:05:12

3 Q. "So you deduct a fixed service 15:05:15

4 fee for the unions and still maintain an 15:05:17

5 expense ratio of 10 percent, but I do 15:05:20

6 think there will be a way to accomplish 15:05:24

7 this while still providing the fund with 15:05:27

8 all of the resources necessary to 15:05:30

9 effectively service our participants." 15:05:33

10 What did you mean by that? 15:05:40

11 A. Just that I was -- I hoped that 15:05:41

12 we could still continue to do the budget. 15:05:43

13 I'm not sure -- I'm assuming this was in 15:05:53

14 preparation for some of the budget talks. 15:05:54

15 My recollection is Duncan had asked me 15:05:57

16 to -- to explain, you know, the expense 15:05:59

17 ratios. There had been a lot of confusion 15:06:05

18 about it. 15:06:08

19 As you pointed out earlier 15:06:09

20 today, you saw that there were a 15:06:10

21 distribution mon -- that would include 15:06:13

22 monies from 2005 for one organization or a 15:06:14

23 partial distribution from one year and not 15:06:18

24 a partial distribution from another year. 15:06:21

25 It may have -- backup royalties may come 15:06:23

1 yet from a third -- or catch-up royalties 15:06:25
2 from third-year, from a foreign collecting 15:06:29
3 society. 15:06:31

4 And the way we would handle 15:06:32
5 those, since they would sometimes be 15:06:34
6 making adjustments from people who had 15:06:38
7 already received royalties in those same 15:06:40
8 periods, is we actually had a blended rate 15:06:43
9 that would basically take into account the 15:06:53
10 various expense ratios for different 15:06:57
11 distributions for different periods. And 15:07:01
12 mind you, some of the expense ratio would 15:07:04
13 fluctuate from distribution to 15:07:06
14 distribution, not just from year-to-year 15:07:08
15 based on the years for which we were 15:07:11
16 distributing royalties. 15:07:14

17 Q. Okay. And one of the -- I think 15:07:15
18 partly because of -- 15:07:17

19 A. If I could finish -- if I could 15:07:19
20 explain that some of this memo was in 15:07:21
21 large part to basically explain that to 15:07:24
22 them. I don't remember the discussions 15:07:26
23 specifically about the amount of service 15:07:27
24 fee that might have been anticipated. 15:07:30
25 This might have been in the early stages 15:07:32

1 of the discussion about how much the 15:07:34
2 traffic would bear. 15:07:37
3 This may have been in the first 15:07:38
4 discussions about that, but the main 15:07:40
5 portion of -- point of this e-mail was to 15:07:42
6 explain primarily to Duncan who had asked 15:07:45
7 the question about what the -- the actual 15:07:47
8 expense ratio was and how it was based on. 15:07:50
9 Q. So your conclusion and this 15:07:53
10 refers to some of the bold -- bolded words 15:07:59
11 right above that sentence that I read was 15:08:05
12 that for the 2012 expense ratio, you felt 15:08:07
13 it was currently just under 9.8 percent 15:08:12
14 and it could go higher, but less than 12 15:08:16
15 percent that you had mentioned earlier; is 15:08:20
16 that correct? 15:08:24
17 A. Yes. 15:08:25
18 Q. Okay. And then going back to 15:08:26
19 that sentence that I did read, was it your 15:08:30
20 view that the -- the resources provided by 15:08:35
21 the unions were necessary to effectively 15:08:39
22 service the participants? 15:08:43
23 MS. McCONNELL: Hold on one 15:08:45
24 second, Dennis. Objection, vague and 15:08:47
25 ambiguous, calls for speculation, 15:08:54

1 please mark the document at tab 26? 15:12:50
2 And this should be Exhibit 118, I 15:12:56
3 believe. 15:12:58
4 (Exhibit 118, E-mail from Dennis 15:12:58
5 Dreith to trustees dated May 30, 2013, 15:12:58
6 marked for identification.) 15:13:34
7 BY MR. THOMAS: 15:13:34
8 Q. Mr. Dreith, this appears to be a 15:13:35
9 e-mail from you to the trustees, May 30, 15:13:37
10 2013. Is that -- do you recognize that? 15:13:43
11 A. Let me just read it. It looks 15:13:49
12 familiar to me. Okay. 15:13:51
13 Q. Did you typically send around a 15:14:38
14 package of material before -- shortly 15:14:42
15 before board of trustee meetings? 15:14:46
16 A. Typically, yes, we would send an 15:14:51
17 agenda, if there's certain materials that 15:14:54
18 needed to be reviewed, and I would attach 15:14:57
19 a budget. 15:14:59
20 Q. Okay. And if you go to the last 15:15:00
21 page of the attachments here there's an 15:15:03
22 agenda for the June 4, 2013 board of 15:15:05
23 trustees meeting, correct? 15:15:10
24 A. Uh-huh, yes. 15:15:14
25 Q. How long did your board of 15:15:15

1 trustees meetings typically last? I 15:15:18
2 noticed this one is starting at 4:00 p.m. 15:15:21
3 A. They would be -- that's a late 15:15:26
4 start for us. I'm surprised -- I don't 15:15:31
5 remember it starting that late, but if I 15:15:33
6 have it on the agenda, that must have been 15:15:34
7 correct. You know, it depends. Some 15:15:38
8 meetings, sometimes we'd have meetings 15:15:41
9 that would last for two days. We'd have a 15:15:42
10 half a day meeting one day and a meeting 15:15:46
11 the next day. 15:15:47
12 Sometimes we'd have a meeting 15:15:48
13 that might last two or three hours in the 15:15:50
14 afternoon, and we might have a subsequent 15:15:53
15 meeting in the morning. And then there 15:15:54
16 were other meetings that literally would 15:15:56
17 last later on as -- as things got more 15:15:58
18 complicated, the meetings started earlier 15:16:03
19 in the day and last all day. 15:16:06
20 Usually most meetings were, 15:16:07
21 like, a one-day meeting. And I don't -- 15:16:09
22 and usually they would start around 10:00 15:16:13
23 in the morning and be over by 4:00, 15:16:15
24 sometimes 5:00. 15:16:18
25 Q. Okay. So item 5 is AFM and 15:16:20

1 SAG-AFTRA service fees. Do you recall -- 15:16:28
2 this is the first board of trustees 15:16:33
3 meeting after you received the draft of 15:16:35
4 the services agreement in late December 15:16:39
5 2012, right? 15:16:40
6 A. Correct. 15:16:41
7 Q. And in fact there's a reference. 15:16:42
8 Item 1 is minutes of the July 2012 15:16:44
9 meeting. That would have been the 15:16:46
10 immediately preceding meeting, right? 15:16:48
11 A. I believe so. 15:16:50
12 Q. Do you have any recollection of 15:16:51
13 any discussion of the service fee at the 15:16:52
14 July 2012 meeting? 15:16:55
15 A. I don't. If there was -- I 15:17:01
16 don't believe there was a discussion about 15:17:05
17 that at the time. 15:17:06
18 Q. Okay. 15:17:08
19 A. I'd have -- if you have some 15:17:10
20 notes that would reflect -- you know, 15:17:12
21 refresh my memory, but I don't -- I don't 15:17:14
22 recall it offhand. 15:17:19
23 Q. Okay. 15:17:19
24 MR. THOMAS: Why don't we -- 15:17:28
25 Anna, can you please mark the minutes 15:17:32

1 opinion taken into account, but you don't 15:30:40
2 have a vote. As the administrator -- 15:30:43
3 BY MR. THOMAS: 15:30:47
4 Q. Did you feel at the time that 15:30:47
5 the -- that the board, by approving the 15:30:48
6 service agreement, was doing something 15:30:54
7 unlawful? 15:30:56
8 MS. McCONNELL: Objection, calls 15:30:57
9 for a legal conclusion, expert 15:30:58
10 opinion. You can answer. 15:31:00
11 A. Yeah, I'm not an attorney. 15:31:04
12 BY MR. THOMAS: 15:31:04
13 Q. I'm just asking what your 15:31:05
14 opinion was at the time. Did you think 15:31:07
15 that by approving the service fee, the 15:31:09
16 board of trustee was doing something 15:31:13
17 unlawful? 15:31:14
18 MS. McCONNELL: Same objections, 15:31:15
19 calls for speculation. 15:31:16
20 A. I didn't have a legal opinion. 15:31:18
21 BY MR. THOMAS: 15:31:20
22 Q. Did you at the time think that 15:31:20
23 the trustees by approving the service fee 15:31:24
24 were violating their own fiduciary duties? 15:31:27
25 MS. McCONNELL: Objection, calls 15:31:30

1 for a legal conclusion, expert 15:31:32
2 opinion. 15:31:33
3 A. I did feel that it presented a 15:31:35
4 conflict of interest, which concerned me 15:31:38
5 about fiduciary obligations, but I have to 15:31:41
6 worry about my fiduciary obligations. 15:31:43
7 Theirs are a matter of their own 15:31:45
8 conscience. 15:31:48
9 I did feel that it was 15:31:48
10 probably -- I didn't have an opinion 15:31:49
11 whether it was legal or not. Legal 15:31:52
12 counsel was saying this was legal, so I 15:31:54
13 had to rely on counsel's advice there. So 15:31:58
14 I didn't make an opinion whether I thought 15:32:01
15 it was lawful or not. I had my opinion 15:32:03
16 whether it was ethical and as appropriate 15:32:05
17 as it should. I felt there were more 15:32:10
18 appropriate ways to deal with any kind of 15:32:12
19 reimbursements or expenses. 15:32:15
20 I certainly felt that if we 15:32:17
21 could identify specific expenses, I would 15:32:19
22 rather just pay the fund -- pay the unions 15:32:21
23 back for what they invested, but I also 15:32:23
24 recognized there could be a cost involved. 15:32:26
25 If the federation or a local union -- and 15:32:29

1 by the way, the local union has received 15:32:32
2 nothing in terms of a service fee. But if 15:32:34
3 a local union or the federation or the 15:32:37
4 pension fund or anybody else that we 15:32:41
5 relied on to -- to get some data, if there 15:32:43
6 was a cost involved with that, I think 15:32:48
7 would be appropriate to reimburse them for 15:32:50
8 these costs. 15:32:54

9 BY MR. THOMAS: 15:32:55

10 Q. Okay. Well, let's take talk a 15:32:55
11 minute then about your own fiduciary duty. 15:32:57
12 You had a fiduciary duty to the 15:32:59
13 participants by virtue of being the 15:33:01
14 executive director, correct? 15:33:03

15 MS. MCCONNELL: Objection, asked 15:33:04
16 and answered. 15:33:05

17 A. Correct. 15:33:05

18 BY MR. THOMAS: 15:33:06

19 Q. Do you think that it would -- 15:33:06
20 that you fulfilled -- let me rephrase 15:33:08
21 that. 15:33:11

22 Do you feel that, as the 15:33:11

23 executive director of the fund, you would 15:33:14

24 have a duty to speak up and try to stop 15:33:19

25 the trustees from doing something that you 15:33:21

1 felt was a breach of fiduciary duty or 15:33:24
2 unlawful? 15:33:26
3 MS. McCONNELL: Objection, asked 15:33:27
4 and answered, lacks foundation, calls 15:33:29
5 for a legal conclusion and expert 15:33:31
6 opinion. 15:33:32
7 A. All I would say I felt I did the 15:33:38
8 best that I could. If something was going 15:33:40
9 to go forward, whether I agreed with it or 15:33:44
10 not, as the administrator, my job is to 15:33:46
11 either try to mitigate it to the best of 15:33:50
12 my ability, to accept it, or resign. I 15:33:53
13 didn't have the power to say to somebody 15:34:02
14 you can't do this. My job is not to tell 15:34:03
15 the trustee or the co-chairs what they can 15:34:06
16 and cannot do, especially given the advice 15:34:09
17 of legal counsel. 15:34:12
18 BY MR. THOMAS: 15:34:14
19 Q. You never threatened to resign 15:34:14
20 over the decision to implement the service 15:34:18
21 fee; did you? 15:34:21
22 A. I did not. 15:34:21
23 Q. And at the meeting itself while 15:34:22
24 you spoke up on the issues you described, 15:34:28
25 you did not tell the trustees that you 15:34:30

1 thought the service fee was unjustified, 15:34:33
2 right? 15:34:35
3 MS. McCONNELL: Objection, asked 15:34:38
4 and answered, misstates prior 15:34:41
5 testimony. 15:34:42
6 A. No, I did not tell them that. 15:34:48
7 Some of the trustees already knew my 15:34:50
8 feelings about it before. Others, 15:34:53
9 probably the co-chairs in particular, it 15:34:54
10 wouldn't have mattered what my opinion 15:34:58
11 was. 15:35:00
12 BY MR. THOMAS: 15:35:01
13 Q. And at the meeting where the 15:35:01
14 service fee was approved at this meeting, 15:35:10
15 you didn't tell the trustees that -- that 15:35:12
16 they should commission an outside 15:35:15
17 consultant to study the actual incremental 15:35:20
18 costs incurred by the unions to provide 15:35:22
19 data to the fund? 15:35:25
20 A. I didn't. One would think that 15:35:29
21 the unions should be able to tell me 15:35:31
22 exactly what the real cost was. Why would 15:35:35
23 they need an outside consultant to 15:35:37
24 determine what their costs were? They 15:35:40
25 know what -- how many hours per day 15:35:42

1 somebody would spend providing support to 15:35:45
2 the fund. They would know what their 15:35:47
3 hourly rates were. They would know what 15:35:50
4 other expenses they incurred, so I don't 15:35:53
5 know why an outside consultant would need 15:35:55
6 to be engaged to do that. 15:35:57

7 Q. But you didn't tell the trustees 15:35:58
8 that you thought the union should be 15:36:00
9 required to provide that information in 15:36:01
10 order to get paid a service fee? 15:36:03

11 MS. McCONNELL: Objection, 15:36:05
12 misstates prior testimony, lacks 15:36:06
13 foundation. 15:36:08

14 A. I did not tell them that. 15:36:10

15 BY MR. THOMAS: 15:36:11

16 Q. Do you recall any discussion 15:36:11
17 prior to the June 2013 meeting with either 15:36:18
18 Duncan or Ray in which there was a 15:36:21
19 discussion that -- about whether it would 15:36:24
20 be feasible or practical to try to measure 15:36:30
21 the actual incremental costs incurred by 15:36:33
22 the unions in providing data and services 15:36:38
23 to the fund? 15:36:41

24 A. No. 15:36:42

25 MR. THOMAS: All right. Maybe 15:36:48

1 A. That is correct. 15:58:45

2 Q. And then on the preceding page 15:58:46

3 in the third full paragraph, about the 15:58:49

4 third sentence starts "In addition, it 15:59:03

5 bears mentioning" -- do you see that? 15:59:06

6 A. Yes. 15:59:10

7 Q. Can you please read that 15:59:13

8 sentence and the two that follow? 15:59:17

9 A. Okay. You're asking me to read 15:59:21

10 those? 15:59:23

11 Q. Yes, please. 15:59:23

12 A. In addition to bears mention -- 15:59:24

13 "In addition, it bears mentioning that 15:59:34

14 since the inception of the AFM and 15:59:37

15 SAG-AFTRA Fund, both the AFM and SAG-AFTRA 15:59:39

16 were responsible not only for the creation 15:59:42

17 of the Fund, but each union also invested 15:59:44

18 significant financial resources to bring 15:59:47

19 about the necessary changes in the U.S. 15:59:50

20 copyright legislation to make the fund a 15:59:52

21 reality. Throughout the entire time, the 15:59:55

22 unions free of charge have provided data 16:00:00

23 necessary to identify and pay entitled 16:00:03

24 performers." 16:00:05

25 Do you want me to continue or -- 16:00:06

1 Q. Just one more sentence. 16:00:07

2 A. Okay. "While in the early days 16:00:08

3 of the fund's operation it was impossible 16:00:10

4 to compensate the unions for their 16:00:12

5 valuable service, the fund has now grown 16:00:14

6 to the point where such compensation is 16:00:16

7 not only possible, but highly warranted." 16:00:18

8 Q. Who wrote that language? 16:00:22

9 A. I believe I wrote that language, 16:00:27

10 yes. 16:00:28

11 Q. Okay. And if the trustees had 16:00:28

12 voted for this letter, that's the language 16:00:31

13 that you would want to send out to the 16:00:34

14 participants over your signature, right? 16:00:36

15 A. Yes. 16:00:38

16 Q. Now, if we take a look at 16:00:38

17 version 2, look at the second page there, 16:00:45

18 that one provides a number of operating -- 16:00:54

19 a figure for the operating expenses of 16:00:58

20 \$402,700 approximately. So it -- it 16:01:00

21 doesn't break out the service fee, but it 16:01:08

22 includes it in the total amount of 16:01:10

23 expenses; isn't that right? 16:01:12

24 A. That's correct. 16:01:14

25 Q. And, again, version 2, if you 16:01:14

1 look at the third paragraph on the first 16:01:18
2 page, has the same language that you just 16:01:20
3 read, right? 16:01:22

4 A. It looks to be the exact same 16:01:28
5 language. 16:01:30

6 Q. And you were in favor of sending 16:01:37
7 that version to the participants, right? 16:01:39

8 A. I was amenable to sending that 16:01:43
9 version to the participants. 16:01:45

10 Q. Okay. And in your cover letter 16:01:47
11 to the trustees -- excuse me, your cover 16:02:01
12 e-mail to the trustees, you say "I am, 16:02:03
13 however, concerned that the significant 16:02:11
14 cost increase in expenses will raise some 16:02:14
15 eyebrows from the membership or result in 16:02:19
16 needless and unwarranted criticism about a 16:02:22
17 completely justifiable expense." 16:02:25

18 The completely justifiable 16:02:34
19 expense is the service fee, right? 16:02:35

20 A. Yes. 16:02:38

21 Q. And is it fair to say that your 16:02:40
22 concern was not that the participants 16:02:48
23 would never find out about the service 16:02:54
24 fee, but that they would see the increase 16:02:57
25 in cost and start asking questions and 16:02:59

1 Q. And in fact in your e-mail at 16:10:12
2 the top of exhibit to Jon, copying the 16:10:14
3 other trustees, you say "Thanks, Jon. 16:10:18
4 Looks like version 1 will be the 16:10:21
5 consensus," right? 16:10:23

6 A. It does. 16:10:27

7 MR. THOMAS: Can you show -- 16:10:44
8 Anna please, can we mark and show the 16:10:46
9 Exhibit at tab 33? 16:10:48
10 (Exhibit 123, E-mail chain dated 16:10:50
11 September 9, 2019, marked for 16:10:50
12 identification.) 16:11:50

13 BY MR. THOMAS: 16:11:50

14 Q. Mr. Dreith, if we could take a 16:11:50
15 look at what's been mark as Exhibit 123, 16:11:52
16 this is an e-mail from you to Ray Hair -- 16:11:56
17 actually all of the trustees, it looks 16:12:03
18 like. 16:12:05

19 A. It looks like it. 16:12:08

20 Q. It concerns the allocation of 16:12:10
21 your salary as between the Film Musicians 16:12:14
22 Secondary Markets Fund and the fund, 16:12:17
23 right? 16:12:24

24 A. I haven't read the entire e-mail 16:12:24
25 but -- 16:12:27

1 Q. If you can take a look, please, 16:12:27
2 that would be fine. 16:12:29
3 A. Okay. 16:12:30
4 MS. McCONNELL: Take your time 16:12:31
5 and read it, Mr. Dreith, and then he 16:12:32
6 can ask you questions. 16:12:35
7 THE WITNESS: Thank you. 16:12:36
8 BY MR. THOMAS: 16:12:36
9 Q. Okay. Have you had a chance to 16:13:50
10 look at it? 16:13:51
11 A. I'm having some -- the print's 16:13:52
12 rather small here so I'm trying to slug 16:13:54
13 through this here. It would be 16:13:57
14 actually -- that would be very helpful. 16:13:58
15 MR. THOMAS: Yeah that would be 16:14:02
16 great. 16:14:03
17 THE WITNESS: Okay, thank you. 16:14:05
18 BY MR. THOMAS: 16:14:05
19 Q. Thanks for asking. I needed the 16:14:12
20 enlargement too. 16:14:14
21 A. Okay. Yeah, the font seemed to 16:14:16
22 get smaller on my computer. I don't 16:14:21
23 understand how that happened. 16:14:24
24 Q. I don't know why they do that. 16:14:25
25 Can you explain generally -- 16:14:27

1 MS. McCONNELL: Sorry, 16:14:29
2 Mr. Thomas -- 16:14:30
3 A. Let me read the whole thing. 16:14:32
4 It's a long e-mail. Sorry. Okay. Yeah 16:14:40
5 I'm done with it, yes. 16:14:48
6 Q. So just to make sure I have the 16:15:03
7 gist of this right, there was an issue 16:15:06
8 that arose because of your transition 16:15:08
9 moving from the Film Musicians Secondary 16:15:10
10 Market Fund to the fund that several 16:15:14
11 months went by without you getting paid; 16:15:17
12 is that correct? 16:15:20
13 A. That's correct. 16:15:21
14 Q. And you made a proposal that 16:15:21
15 you'd be paid until everything got sorted 16:15:28
16 out, \$12,000 a month retroactive to the 16:15:32
17 point where you were removed? 16:15:36
18 A. Yes, I believe -- 16:15:39
19 (Crosstalk.) 16:15:39
20 Q. How did you come up with the 16:16:06
21 proposal of \$12,000 a month? 16:16:07
22 A. I don't recall. 16:16:12
23 Q. You felt it was a reasonable 16:16:13
24 proposal? 16:16:30
25 A. I looked at the -- I don't know 16:16:31

1 what the numbers were from honestly. At 16:16:32
2 the time, there must have been some 16:16:33
3 rationale for the number. I just -- I 16:16:35
4 wouldn't have proposed it if I didn't feel 16:16:39
5 there was a rationale to the number and -- 16:16:41
6 but looking at it right now, I'm sorry, I 16:16:44
7 just don't recall. 16:16:47

8 Q. Well, during this time, you were 16:16:47
9 essentially working more or less full-time 16:16:59
10 at the Fund; is that right? 16:17:01

11 A. Yes I think it was safe to say I 16:17:06
12 was actually holding down two full-time 16:17:09
13 jobs at this point. 16:17:12

14 Q. And that's because the Secondary 16:17:14
15 Markets Fund hadn't found a replacement 16:17:17
16 for you yet; is that right? 16:17:19

17 A. That's correct. 16:17:20

18 Q. Okay. And the \$12,000 figure 16:17:20
19 that you came up with was not based on 16:17:23
20 your actual out-of-pocket costs for 16:17:25
21 providing services to the fund, right, 16:17:31
22 like gas costs and commuting costs and 16:17:33
23 mileage, right? 16:17:36

24 A. I wasn't aware that an 16:17:37
25 administrator had an out-of-pocket cost. 16:17:39

1 I mean, a salary is not an out-of-pocket 16:17:41
2 cost. So, no, this would be to compensate 16:17:45
3 me for time spent. 16:17:48

4 Q. And you believe that that was 16:17:50
5 a -- a fair value -- a fair compensation 16:17:55
6 for the services you were provided to the 16:18:06
7 fund, even though it wasn't based on the 16:18:08
8 incremental cost for you to be getting up 16:18:10
9 and going to work every day, right? 16:18:13

10 MS. McCONNELL: Objection, 16:18:14
11 misstates prior testimony, vague and 16:18:15
12 ambiguous. 16:18:23

13 THE WITNESS: Okay. 16:18:25

14 A. Looking at it now, I would say 16:18:26
15 it looks like a fair and reasonable cost 16:18:28
16 to compensate someone. I don't -- I'm not 16:18:30
17 aware of any salary offered to anybody 16:18:34
18 that's an out-of-pocket cost. It's a 16:18:36
19 salary. It's the way you get paid for the 16:18:39
20 hours you put in. I'm assuming that 16:18:42
21 lawyers don't charge only for 16:18:43
22 out-of-pocket costs. 16:18:45

23 BY MR. THOMAS: 16:18:45

24 Q. That's true. Sometimes people 16:18:48
25 charge based on a percentage of some other 16:18:50

1 analyze it. But it does say that, you 16:55:54
2 know the fund would be allowed to cover, 16:55:57
3 you know, the costs of doing business. It 16:56:00
4 didn't say that we should be negotiating a 16:56:03
5 value of something. It talks about what 16:56:06
6 the cost of something is. 16:56:08

7 Q. In other situations where the 16:56:09
8 fund incurred operational expenses, did 16:56:24
9 you think it was necessary to examine the 16:56:30
10 underlying costs of providing those 16:56:31
11 services to the fund? 16:56:34

12 A. Can you ask about a specific -- 16:56:40

13 Q. For example, when you paid your 16:56:42
14 electric bill, did you just pay it if it 16:56:44
15 seemed like a reasonable electric bill or 16:56:47
16 did you go ask the power company to 16:56:49
17 justify how much it really cost to deliver 16:56:53
18 the power to the fund? 16:56:54

19 MS. McCONNELL: Objection, 16:56:56
20 incomplete hypothetical, vague and 16:56:57
21 ambiguous. 16:56:59

22 A. I think that that would be 16:57:00
23 rather difficult to do. We know that we 16:57:02
24 get a charge from the utility company. We 16:57:04
25 know that the charge from that utility 16:57:07

1 company involves a certain profit margin 16:57:08
2 for -- for the shareholders. It involves 16:57:12
3 the cost of equipment and salaries and all 16:57:15
4 those kind of things that are there. So 16:57:18
5 that's the cost -- that's the cost of that 16:57:21
6 service. It's not necessarily the value. 16:57:23
7 I may value having electricity, but I know 16:57:27
8 that it cost me an X amount of dollars. 16:57:30
9 BY MR. THOMAS: 16:57:30
10 Q. Let's take another example then. 16:57:33
11 A. Okay. 16:57:36
12 Q. The fund sometimes obtains 16:57:36
13 public record information from databases 16:57:38
14 like Nexis Lexis [sic], right? 16:57:40
15 A. Yes. 16:57:42
16 Q. And the incremental cost for 16:57:43
17 LexisNexis to e-mail material to you is 16:57:47
18 probably a penny or something like that, 16:57:49
19 but that's not what they charge; is it? 16:57:52
20 A. No. 16:57:55
21 MS. McCONNELL: Objection, 16:57:55
22 incomplete hypothetical, vague and 16:57:56
23 ambiguous. 16:57:58
24 A. You know, once again, you know, 16:58:02
25 LexisNexis is a service. The fund can 16:58:04

1 expand beyond that. 17:34:38

2 MS. McCONNELL: He's giving you 17:34:41

3 as full of an answer as he feels is 17:34:43

4 appropriate, which is well within his 17:34:46

5 rights so... 17:34:48

6 A. You asked me if I had a date in 17:34:50

7 mind, and I had not had a date. I was 17:34:52

8 hoping that we would have a replacement 17:34:54

9 for myself. The trustees have engaged the 17:34:55

10 employment firm of Korn Ferry to do a 17:35:00

11 search, and I was surprised that I never 17:35:03

12 heard from anybody at Korn Ferry to talk 17:35:04

13 to me about what the job description was 17:35:09

14 like, what I saw as the job or anything 17:35:10

15 like that. I would have thought that 17:35:13

16 would be appropriate. 17:35:14

17 And I did mention it to Duncan a 17:35:14

18 couple of times that, you know, I wondered 17:35:16

19 how the process was going, but I had not 17:35:18

20 set a date. So I thought that was 17:35:21

21 responsive to your question, but perhaps I 17:35:22

22 didn't understand your question. 17:35:24

23 Q. Well, okay. When you did depart 17:35:27

24 from the fund in July of 2017, did the 17:35:32

25 board of trustees have a successor 17:35:38

1 executive director lined up? 17:35:42

2 A. No. 17:35:44

3 Q. Jennifer La Blanca stepped into 17:35:45

4 role briefly; did she not? 17:35:49

5 A. I was not aware of that. If she 17:35:51

6 did, I didn't know that. 17:35:53

7 Q. When did you become aware that 17:35:55

8 the trustees had hired a forensic 17:35:57

9 accountant to review irregularities in the 17:36:02

10 expense approval process at the fund? 17:36:06

11 A. I don't remember the date, but 17:36:08

12 it was several -- several months before my 17:36:09

13 retirement, and we had had some 17:36:13

14 discussions. I had some discussions with 17:36:16

15 Duncan that I was unhappy with the CFO. 17:36:19

16 And he had known that I really had -- it 17:36:22

17 wasn't I was opposed to the CFO. I was -- 17:36:25

18 I had a different candidate in mind who I 17:36:27

19 thought would have done a much better job, 17:36:29

20 but they were set on Jennifer so we hired 17:36:31

21 Jennifer. 17:36:34

22 I was unhappy with her. It was 17:36:35

23 not a good relationship. And so at one 17:36:37

24 point when I was talking about some things 17:36:43

25 there, Duncan informed me that he thought 17:36:45

1 the best thing to do was to hire a 17:36:48
2 forensic accountant to look into a number 17:36:50
3 of matters. They were going to bring an 17:36:52
4 employment lawyer in, and at the same time 17:36:54
5 the forensic accountant came in to look at 17:36:56
6 a whole host of things. 17:36:59

7 I really didn't know the scope 17:37:00
8 of it all. I knew was that there would be 17:37:02
9 a fairly broad based audit, and I was 17:37:05
10 asked to cooperate with the forensic 17:37:08
11 auditor which we did. I -- I think the 17:37:11
12 auditor would say that we provided 17:37:14
13 excellent support. We tried to meet all 17:37:16
14 of her requests, or their requests as 17:37:21
15 timely as possible. I instructed 17:37:23
16 everybody in our staff to -- to be as 17:37:25
17 responsive as they possibly could with 17:37:28
18 them, to move this process along. 17:37:31

19 Q. Ultimately the report was 17:37:39
20 critical of you; wasn't it? 17:37:41

21 A. No. 17:37:45

22 MS. McCONNELL: Objection, lacks 17:37:45
23 foundation. 17:37:49

24 A. No, that's not correct. 17:37:49
25 Ultimately by almost happenstance, the 17:37:54

1 auditors found that my former assistant 17:37:58
2 who had been promoted to the office 17:38:02
3 manager status so was no longer my 17:38:04
4 assistant had been falsifying purchase 17:38:08
5 orders and embezzling small amounts of 17:38:12
6 money over a period of time. And so 17:38:15
7 that's what was uncovered in the forensic 17:38:21
8 audit. That was the only thing that was 17:38:24
9 stated. 17:38:26
10 The auditors themselves stated 17:38:26
11 to me that they -- would have been no way 17:38:28
12 for me to know this, that they didn't feel 17:38:30
13 I would be held responsible or at fault in 17:38:33
14 any way for this. And when I found out 17:38:36
15 about that, I placed that person on 17:38:38
16 administrative leave, and as soon as I was 17:38:40
17 presented with what I considered 17:38:44
18 irrefutable evidence, I terminated her. 17:38:47
19 BY MR. THOMAS: 17:38:53
20 Q. Isn't it -- go ahead. Finish 17:38:53
21 your answer. I'm sorry. 17:38:54
22 A. That's -- I can pick up more 17:38:55
23 later. 17:38:58
24 Q. Well, isn't it true that the -- 17:38:59
25 this is Bond Beebe, right, the forensic 17:39:02

1 accountant? 17:39:07

2 A. Yes. 17:39:07

3 Q. They had found that you failed 17:39:07

4 to supervise and essentially rubber 17:39:09

5 stamped expense reports from your 17:39:12

6 assistant who used falsified invoices to 17:39:13

7 embezzle about \$20,000, right? 17:39:15

8 MS. McCONNELL: Objection, lacks 17:39:20

9 foundation. 17:39:21

10 A. I had never heard that statement 17:39:25

11 from Bond Beebe. At best, specifically I 17:39:27

12 had been told that there was no fault of 17:39:31

13 mine. I wouldn't say they were rubber 17:39:32

14 stamped. These were purchase orders that 17:39:35

15 looked totally routine that had been 17:39:38

16 falsified. I approved them. It was 17:39:40

17 routine, and there was never mention to me 17:39:44

18 of any kind of poor management or failure 17:39:49

19 to manage properly and -- and I don't 17:39:52

20 believe -- I think that the settlement was 17:39:59

21 probably \$20,000. 17:40:01

22 What I looked at were really 17:40:03

23 identifiable amounts of about \$10,000 that 17:40:06

24 I feel she embezzled. There were a lot of 17:40:08

25 amounts, things that were actually 17:40:11

1 legitimate expenses that they tacked on to 17:40:13
2 that, but she settled for an amount of, I 17:40:16
3 thought it was \$20,000, it could have been 17:40:18
4 \$25,000, which occurred over a period of 17:40:20
5 several years. 17:40:24
6 BY MR. THOMAS: 17:40:24
7 Q. Your forensic accountant also 17:40:27
8 made findings that you circumvented the 17:40:29
9 funds expense reimbursement policies; 17:40:35
10 isn't that right? 17:40:38
11 A. No, that's not correct. 17:40:39
12 Q. Didn't they criticize you for 17:40:41
13 avoiding the process of having the 17:40:45
14 co-chairs review your travel expenses by 17:40:49
15 having Sheri Hoffman book your travel for 17:40:51
16 you so that it was a expense of hers that 17:40:54
17 then you could approve? 17:40:56
18 A. That's not accurate. That was 17:40:57
19 not in a report. That was criticized by 17:40:59
20 Ray and Duncan and that was a total 17:41:02
21 mischaracterization of what happened. It 17:41:06
22 was not to avoid anything. We had an -- 17:41:08
23 we had a travel budget. The travel budget 17:41:11
24 was approved. Rather than each book our 17:41:13
25 travel individually, we booked myself, 17:41:18

1 Sheri Hoffman's travel and Lorraine Hurch 17:41:21
2 when the three of us had traveled 17:41:24
3 together, booked it all on one card. 17:41:26
4 Sheri had done the coordinating 17:41:28
5 in the travel and the hotel, and the -- 17:41:30
6 and the airfare. It was done to 17:41:33
7 consolidate things actually to save money. 17:41:36
8 In no way was it meant to circumvent 17:41:40
9 anything. I never in my wildest 17:41:43
10 imagination thought that a budget item 17:41:45
11 that was approved had to get approved a 17:41:46
12 second time. 17:41:48
13 Had they ever mentioned to me 17:41:49
14 that they would have approved it a second 17:41:51
15 time, we would have done it. There was a 17:41:52
16 nothing to hide. These were totally 17:41:54
17 customary charges, normal, actually 17:41:56
18 reasonable airfares, reasonable hotel 17:41:58
19 bills. 17:42:00
20 They just happened to all go on 17:42:01
21 one card to save money, put them on a 17:42:02
22 consolidated bill and was booked by one 17:42:06
23 person. There was nothing being hidden. 17:42:08
24 It was well within the travel budget. It 17:42:11
25 was preapproved by the trustees. 17:42:13

1 Q. Okay, Mr. Dreith, I don't want 17:42:15
2 to debate the -- the legitimacy of the 17:42:17
3 expenses with you. I'm just going to ask 17:42:21
4 what's your basis for saying that that 17:42:23
5 criticism was not in the forensic 17:42:26
6 accountant's report? 17:42:29

7 MS. McCONNELL: Objection, calls 17:42:30
8 for speculation, lacks foundation. 17:42:31

9 A. All I can tell you is I was 17:42:35
10 never presented with anything like that. 17:42:37
11 I've never seen the report. I never saw 17:42:39
12 that -- I did not see that -- what was 17:42:41
13 being said to me, I did not see that in a 17:42:49
14 report. 17:42:52

15 BY MR. THOMAS: 17:42:52

16 Q. But you haven't seen the Bond 17:42:53
17 Beebe report, have you? 17:42:56

18 A. I don't believe I ever received 17:42:57
19 it. 17:42:58

20 MR. KIESEL: Andrew, can we get 17:43:04
21 a time check to see how much time we 17:43:05
22 have? 17:43:08

23 MR. THOMAS: Yeah, actually I 17:43:10
24 was going to go off the record in a 17:43:11
25 minute. We could probably have them 17:43:13

1 disagree with the privilege 18:06:01
2 instruction because it's -- we're 18:06:02
3 talking about a period of time before 18:06:05
4 he was presumably ever entered into a 18:06:06
5 consulting agreement or -- or had any 18:06:10
6 attorney/client relationship with 18:06:14
7 either of your firms. 18:06:15

8 MS. McCONNELL: And your 18:06:16
9 question is whether he consulted with 18:06:17
10 our firms about him suing the Fund? 18:06:19

11 MR. THOMAS: Not about him 18:06:22
12 suing, but about the possibility of a 18:06:23
13 class action lawsuit being maintained 18:06:26
14 against the Fund. 18:06:28

15 MS. McCONNELL: I don't see how 18:06:34
16 that couldn't be attorney/client 18:06:35
17 privileged if he's consulting with a 18:06:38
18 law firm to ask whether a class action 18:06:39
19 lawsuit could be maintained against 18:06:42
20 the Fund. 18:06:43

21 BY MR. THOMAS: 18:06:43

22 Q. Let me ask it differently, 18:06:47

23 Mr. Dreith. 18:06:49

24 Did you have any role in 18:06:50

25 recruiting Kevin Risto to be the 18:06:52

1 representative plaintiff in this lawsuit? 18:06:55

2 MS. McCONNELL: Just object, 18:06:58

3 it's vague and ambiguous, but I think 18:06:59

4 you can answer the question, Dennis. 18:07:01

5 A. Sure. Before I do, I lost 18:07:03

6 everybody on my screen. I can only see 18:07:06

7 myself. And I can see a document here, 18:07:09

8 but I can't see everybody else. 18:07:12

9 MR. KIESEL: Can I ask you to 18:07:15

10 take the document down? 18:07:17

11 MR. THOMAS: You can take the 18:07:18

12 document down. 18:07:23

13 (Whereupon, a brief discussion 18:07:28

14 is held off the record.) 18:07:28

15 A. Mr. Thomas, can you repeat the 18:07:51

16 question, please? 18:07:52

17 MR. THOMAS: Can you read it 18:07:58

18 back, please? 18:07:59

19 (Whereupon, the question is read 18:08:10

20 back by the reporter.) 18:08:10

21 A. After a discussion in -- in my 18:08:16

22 office with Kevin, he had some questions 18:08:18

23 about the service fee and complained about 18:08:24

24 it and he asked what could be done about 18:08:26

25 it, I referred him to Neville Johnson. 18:08:28

1 MR. THOMAS: Anna, can you 18:08:44
2 upload and mark tab 60, please? 18:08:46
3 (Exhibit 133, Document Bates 18:08:50
4 number Dreith 136, marked for 18:08:50
5 identification.) 18:09:13
6 MR. THOMAS: Can we share that 18:09:13
7 document, please? 18:09:14
8 BY MR. THOMAS: 18:09:33
9 Q. If we can scroll down this 18:09:33
10 document, which has Bates number Dreith 18:09:35
11 136, there's an e-mail from Bruce Wayne 18:09:39
12 to Dirty Swift and to Dennis Dreith. Do 18:09:41
13 you see that? 18:09:44
14 A. Yes. 18:09:45
15 Q. Bruce Wayne is your business 18:09:46
16 partner in Transparency, correct? 18:09:50
17 A. No, Bruce is the vice president 18:09:53
18 of Transparency. 18:09:53
19 Q. Oh, that's right, your business 18:09:54
20 partner is Sheri Hoffman, right? 18:09:56
21 A. That's correct. 18:09:59
22 Q. Dirty Swiftbut is the stage name 18:10:00
23 of Kevin Risto; is that right? 18:10:02
24 A. That's correct. 18:10:04
25 Q. And the e-mail says, "Hey 18:10:04

1 Dennis, per our conversation, I spoke to 18:10:06
2 Swift about your interest in him being a 18:10:08
3 plaintiff for the class action" -- I think 18:10:11
4 he means suit. "He would like more 18:10:14
5 information." 18:10:17

6 Does this refresh your 18:10:18
7 recollection that you had previously had 18:10:19
8 conversations with a lawyer about setting 18:10:22
9 up a class action lawsuit and you wanted 18:10:24
10 to speak with Mr. Risto about the 18:10:26
11 possibility of being a plaintiff? 18:10:29

12 MS. McCONNELL: Objection, 18:10:31
13 misstates prior testimony, lacks 18:10:32
14 foundation, and the same objections I 18:10:34
15 made before when you asked him 18:10:37
16 questions about class action lawsuit 18:10:38
17 about it being privileged and work 18:10:41
18 product. I don't think he can answer 18:10:43
19 that question. 18:10:48

20 MR. THOMAS: Are you instructing 18:10:48
21 him not to answer that question? This 18:10:49
22 is an e-mail that was produced that 18:10:50
23 was testified about in the last 18:10:52
24 deposition. 18:10:53

25 MS. McCONNELL: Well, you -- you 18:10:55

1 compounded two things in your 18:10:57
2 question, Mr. Thomas. I think that's 18:10:58
3 where the issue is. He did just 18:11:00
4 testify to you that he referred 18:11:04
5 Mr. Risto to Mr. Johnson. 18:11:05
6 BY MR. THOMAS: 18:11:05
7 Q. And does this -- let me ask a 18:11:11
8 different question then. 18:11:13
9 Does this document refresh your 18:11:14
10 recollection that you referred Mr. Risto 18:11:16
11 to Neville Johnson after this June 11, 18:11:19
12 2018 e-mail? 18:11:23
13 A. It probably was after that. I 18:11:32
14 think Bruce's e-mail is a 18:11:35
15 little hyperbole. Bruce was present when 18:11:36
16 we had our discussion about service fees. 18:11:41
17 We have -- when we have a new client, and 18:11:46
18 then they ask us what are the fees of the 18:11:50
19 various CMOs. What are -- how do they 18:11:53
20 work out -- so we will have a general, 18:12:01
21 sort of, onboarding discussion where we 18:12:04
22 will describe what are the fees with all 18:12:06
23 the different kind of clients and all the 18:12:07
24 different CMOs, what we charge, and, you 18:12:10
25 know, part of that was a discussion what 18:12:14

1 to be a plaintiff in a class action? 18:13:17

2 MR. THOMAS: No, for anyone else 18:13:19

3 to be. 18:13:21

4 BY MR. THOMAS: 18:13:21

5 Q. Did you speak with anyone else 18:13:21

6 about that person being a plaintiff in a 18:13:22

7 class action lawsuit against the Fund? 18:13:24

8 A. No. 18:13:28

9 Q. Okay. Prior to this June 11, 18:13:33

10 2018 e-mail from Bruce Wayne to you, had 18:13:55

11 you had any conversation with Neville 18:14:00

12 Johnson about the possibility of a class 18:14:03

13 action lawsuit being maintained against 18:14:10

14 the Fund? 18:14:11

15 MS. McCONNELL: Objection, vague 18:14:12

16 and ambiguous and also is 18:14:14

17 attorney/client privileged and work 18:14:17

18 product. So I'm going to instruct him 18:14:19

19 not to answer that question. 18:14:22

20 BY MR. THOMAS: 18:14:22

21 Q. Mr. Dreith, when did you become 18:14:26

22 a client of the Johnson & Johnson law 18:14:27

23 firm? 18:14:31

24 A. I don't have the date of that. 18:14:35

25 Q. You are represented by the 18:14:36

1 Johnson & Johnson firm in connection with 18:14:39
2 this deposition, right? 18:14:41
3 A. I'm a consultant to Keisel firm 18:14:42
4 and Johnson & Johnson. 18:14:46
5 Q. Okay, but are they your lawyers 18:14:47
6 or are you a consultant in connection with 18:14:49
7 this litigation? 18:14:51
8 MS. McCONNELL: Objection, calls 18:14:52
9 for a legal conclusion. We did 18:14:55
10 represent him for the purposes of his 18:14:57
11 deposition. 18:14:58
12 BY MR. THOMAS: 18:14:58
13 Q. Mr. Dreith, you didn't hire 18:15:06
14 Johnson & Johnson two years ago to 18:15:07
15 represent you in connection with this 18:15:08
16 deposition; did you? 18:15:10
17 MS. McCONNELL: Objection, lacks 18:15:13
18 foundation, vague and ambiguous. 18:15:15
19 A. I would say no because certainly 18:15:19
20 I didn't know about this deposition two 18:15:21
21 years ago so, no, I did not hire them two 18:15:23
22 years ago. 18:15:26
23 BY MR. THOMAS: 18:15:26
24 Q. You mentioned that you're a 18:15:26
25 litigation consultant to both firms. Do 18:15:28

1 you have a written agreement with the 18:15:30
2 Johnson & Johnson law firm that addresses 18:15:32
3 your role as a consultant? 18:15:36
4 A. I have a verbal agreement. 18:15:42
5 Q. Do you have any written 18:15:44
6 agreement with the Johnson & Johnson law 18:15:45
7 firm or the Keisel law firm prior to the 18:15:48
8 year 2020 in which you hired them to be 18:15:57
9 your lawyers? 18:16:03
10 A. I don't believe so. 18:16:09
11 Q. So in 2018, the Johnson & 18:16:12
12 Johnson firm was not your legal counsel; 18:16:15
13 were they? 18:16:19
14 MS. McCONNELL: Objection, 18:16:20
15 calls -- lacks -- sorry, lacks 18:16:21
16 foundation, calls for a legal 18:16:24
17 conclusion, privileged is attached by 18:16:26
18 virtue of a written agreement, 18:16:29
19 Mr. Thomas. 18:16:31
20 BY MR. THOMAS: 18:16:32
21 Q. In the year 2018, did you have 18:16:32
22 any verbal agreement that the Johnson & 18:16:34
23 Johnson law firm was going to act as your 18:16:36
24 lawyer? 18:16:38
25 A. I don't believe in 2018, I don't 18:16:45

1 believe it's -- I think the answer is no. 18:16:48

2 Q. When was the first time that you 18:16:50

3 talked with anyone at the Johnson & 18:16:51

4 Johnson law firm about them representing 18:16:53

5 you as your lawyers? Was it -- 18:16:55

6 A. I don't recall. 18:17:01

7 Q. -- in the past year? 18:17:01

8 A. I don't recall the date. 18:17:03

9 Q. When you first had any 18:17:12

10 conversation with the Johnson -- somebody 18:17:13

11 at the Johnson & Johnson law firm about 18:17:15

12 them representing you as your lawyer, was 18:17:18

13 it because this deposition was coming up? 18:17:20

14 MS. McCONNELL: Objection, lacks 18:17:27

15 foundation, calls for a legal 18:17:28

16 conclusion. 18:17:31

17 A. I've had a number of 18:17:46

18 conversations with Neville Johnson over 18:17:47

19 the years. I've known Neville for many 18:17:49

20 years. Our paths have crossed oftentimes 18:17:52

21 so I don't remember exactly when we had 18:17:55

22 any discussions. 18:17:58

23 BY MR. THOMAS: 18:18:02

24 Q. In connection with your being 18:18:02

25 represented by Neville -- excuse me, by 18:18:04

1 Johnson & Johnson and by the Keisel firm 18:18:06
2 in connection with this deposition, do you 18:18:08
3 have any written agreement? 18:18:11
4 A. No. 18:18:15
5 Q. Okay. You said your agreement 18:18:15
6 with the -- you had an oral agreement with 18:18:24
7 the Johnson & Johnson firm to act as a 18:18:27
8 consultant in connection with this 18:18:30
9 lawsuit, right? 18:18:32
10 A. Correct. 18:18:33
11 Q. You also had an oral agreement 18:18:34
12 with the Keisel law firm to act as a 18:18:36
13 consultant in connection with this 18:18:38
14 lawsuit? 18:18:40
15 A. Yes. 18:18:40
16 Q. How are you -- let me back up. 18:18:40
17 Are you being compensated for 18:18:45
18 your services as a consultant? 18:18:46
19 A. No. 18:18:48
20 Q. Do you have any expectation of 18:18:49
21 being compensated for your services as a 18:18:54
22 consultant? 18:18:57
23 A. No. 18:19:01
24 Q. If the plaintiffs are successful 18:19:01
25 in this lawsuit, do you have any 18:19:03

**AFM and AFTRA
Intellectual Property Rights Distribution Fund**

THIS AGREEMENT AND DECLARATION OF TRUST is made and entered into as of the 16th day of September, 1998, in the City of New York, State of New York, by and between the American Federation of Musicians of the United States and Canada, AFL-CIO-CLC ("AFM") and the American Federation of Television and Radio Artists ("AFTRA"), hereinafter jointly known as the Unions.

Preamble

WHEREAS, the Unions or their designated entities obtain and distribute to artists royalties and remuneration that are created by U.S. or foreign law and that are appropriate for collective administration, and

WHEREAS, the Unions have entered into a Reciprocal Agreement and an Annex for the Distribution of Record Rental Royalties Collected in Japan, pursuant to which they will receive and distribute record rental remuneration payable to non-featured instrumentalists and vocalists under the law of Japan, and

WHEREAS, the Unions may enter into other such agreements for the receipt and distribution of royalties or remuneration for the benefit of their members and other performing artists in the United States and Canada, and

WHEREAS, to accomplish this purpose the Unions desire to establish a trust fund for receiving and distributing royalties and remuneration, and

WHEREAS, the trust fund shall be known as the AFM and AFTRA Intellectual Property Rights Distribution Fund, and

WHEREAS, the Unions desire to set forth the terms and conditions under which the said Fund is to be established and administered,

NOW, THEREFORE, in consideration of the premises, it is mutually understood and agreed as follows:

**Article I
Definitions**

Section 1. UNIONS. The term "Unions" as used herein shall mean the American Federation of the Musicians of the United States and Canada, AFL-CIO-CLC and the American Federation of Radio and Television Artists.

Section 2. AFM. The term "AFM" as used herein shall mean the American Federation of Musicians of the United States and Canada, AFL-CIO-CLC.

**Exhibit
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Section 3. AFTRA. The term "AFTRA" as used herein shall mean the American Federation of Television and Radio Artists.

Section 4. AGREEMENT AND DECLARATION OF TRUST. The term "Agreement and Declaration of Trust" as used herein shall mean this instrument including any amendments hereto and modifications hereof.

Section 5. FUND. The term "Fund" as used herein shall mean the AFM and AFTRA Intellectual Property Rights Distribution Fund.

Section 6. AGREEMENT FOR THE RECEIPT AND DISTRIBUTION OF REMUNERATION. The term "agreement for the receipt and distribution of remuneration" as used herein shall mean any agreement entered into by the AFM, AFTRA or the Unions with a collecting society, rights organization or other appropriate entity to receive royalties or remuneration held by that entity and to distribute such royalties and remuneration to eligible artists.

Section 7. ARTISTS. The term "artists" as used herein shall mean instrumental musicians and vocalists.

Article II Creation of Fund

Section 1. ESTABLISHMENT OF FUND. There is hereby established the AFM and AFTRA Intellectual Property Rights Distribution Fund, to be used for the purpose set forth in this Agreement and Declaration of Trust.

Section 2. GENERAL PURPOSE. The Fund shall be a trust fund and shall be used for the purpose of receiving and distributing royalties or remuneration to artists in accordance with such agreements for receipt and distribution of remuneration as are entered into by the Unions with the relevant collecting societies, rights organizations or other appropriate entities. The Fund shall further provide the means for financing the expenses of the Trustees and the operation and administration of the Fund, in accordance with this Agreement and Declaration of Trust. The Fund is intended to satisfy the requirements of section 501(c)(5) of the Internal Revenue Code and shall be construed in all respects consistently with section 501(c)(5).

Article III Trustees

Section 1. AFM AND AFTRA TRUSTEES. The operation and administration of the Fund shall be the joint responsibility of four Trustees, two appointed by the AFM and two appointed by AFTRA.

Section 2. INITIAL TRUSTEES. The initial Trustees shall be:

Steve Young
International President
AFM

Bruce A. York
National Executive Director
AFTRA

Thomas F. Lee
Vice President
AFM

Shelby Scott
President
AFTRA

Section 3. ACCEPTANCE OF TRUSTEESHIP. The Trustees shall immediately confer and sign this Agreement and Declaration of Trust, which establishes the Fund. The Trustees, by affixing their signatures at the end of this Agreement and Declaration of Trust, agree to accept the trusteeship and act in their capacity strictly in accordance with the provisions of this Agreement and Declaration of Trust.

Section 4. TERM OF TRUSTEES. Each Trustee shall continue to serve as such until his or her death, incapacity, resignation, or removal by the appointing Union. Each Union may remove or replace its Trustee at will.

Section 5. SUCCESSOR TRUSTEES. Each Union shall appoint its successor Trustees.

Section 6. FORM OF NOTIFICATION. In case any Trustee shall be removed, replaced, or succeeded, a statement in writing by the relevant Union shall be sufficient evidence of its action, when forwarded to the Fund and to the remaining Trustee. Any resignation shall be evidenced in writing and forwarded by registered mail to the Fund and the remaining Trustee, and shall not be effective for two months following the date of mailing unless a successor Trustee has been appointed.

Article IV Powers, Duties and Obligations of Trustees

Section 1. PROPERTY AND ASSISTANCE. The Trustees are authorized and empowered to lease or purchase such premises, materials, supplies and equipment, and to hire, employ and retain such legal counsel, investment advisor, administrative, accounting, actuarial, clerical and other assistants or employees as in their discretion they may find necessary or appropriate in the performance of their duties.

Section 2. CONSTRUCTION OF AGREEMENT. The Trustees shall have power to construe the provisions of this Agreement and Declaration of Trust and the terms used herein, and any construction adopted by the Trustees in good faith shall be binding upon the AFM, AFTRA, and artists claiming benefits under the Fund.

Section 3. GENERAL POWERS. The Trustees are hereby empowered, in addition to other such powers as are set forth herein or conferred by law:

- A. To establish and administer the Fund on behalf of artists who may be entitled

- to payments pursuant to agreements for the receipt and distribution of remuneration entered into by the AFM, AFTRA or the Unions and determined by the Trustees to be appropriate for administration by the Fund.
- B. As to each agreement for the receipt and distribution of remuneration recommended by the AFM, AFTRA or the Unions, to decide whether or not to administer the agreement through the Fund.
 - C. As to each agreement for the receipt and distribution of remuneration which is to be administered through the Fund, to establish governing rules and procedures for the distribution that are consistent with the relevant agreement.
 - D. As to each agreement for the receipt and distribution of remuneration which is to be administered through the Fund, to pay all expenses necessary to the establishment, administration and operation of the agreement out of the receipts generated by the agreement.
 - E. To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Fund and do all acts as they, in their discretion, may deem necessary and advisable.
 - F. To compromise, settle, arbitrate, and release claims or demands in favor of or against the Fund or the Trustees on such terms and conditions as the Trustees may deem advisable.
 - G. To establish and accumulate as part of the Fund a reserve or reserves, adequate, in the opinion of the Trustees, to carry out the purposes of the Fund.
 - H. To pay out of the Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Fund or any money, property, or securities forming a part thereof.
 - I. To make appropriate allocations of common administrative expenses and disbursements shared or to be shared with any other Plan or Fund, or among the various agreements for the receipt and distribution of remuneration.
 - J. To receive contributions, payments, distributions or transfers from any source whatsoever to the extent permitted by law.
 - K. To establish advisory committees composed of AFM and AFTRA representatives and/or other artists or artists' representatives, and to set forth the duties and functions of the members of such advisory committees.
 - L. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.
 - M. To establish such bank account or accounts as the Trustees deem necessary in their discretion, including escrow accounts pending the adoption of distribution rules governing the administration of an agreement for the receipt and distribution of remuneration.
 - N. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective of distributing remuneration to eligible artists in the most efficient and economical manner.

- O. To purchase or obtain from the AFM, AFTRA, the AFM and Employers' Pension Fund, the AFTRA Health and Retirement Funds, the Phonograph Manufacturers' Special Payments Fund, the Motion Picture Special Payments Fund or any commercial source any data helpful for the identification and location of artists eligible for remuneration or the identification of recorded or other performances covered by an agreement for the receipt and distribution of remuneration.
- P. To invest the assets of the Fund with care, skill, prudence and diligence under circumstances then prevailing that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with such aims, without regard to state law restrictions on investments.

Section 4. COMPENSATION. The Trustees shall not receive compensation for the performance of their duties.

Section 5. PERSONAL LIABILITY. Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Fund contracted by them as Trustees, or for the non-fulfillment of contracts, but the same shall be paid out of the Fund and the Fund is hereby charged with a first lien in favor of such Trustee for indemnification for any amounts paid out by any such Trustee for any such liability and for indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own willful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

The Trustees and each individual Trustee shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of their duties so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own willful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any agent or attorney elected or appointed by or acting for the Trustees.

The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements contained therein.

Neither the AFM nor AFTRA shall in any way be liable in any respect for any of the acts, omissions or obligations of the Trustees, individually or collectively.

The Trustees may from time to time consult with legal counsel and shall be fully protected in acting upon such advice of counsel to the Fund as respects legal questions.

Section 6. BOOKS OF ACCOUNT. The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be audited at least annually

by a certified public accountant selected by the Trustees. Such audits shall be available at all times for inspection by the AFM and AFTRA.

Section 7. EXECUTION OF DOCUMENTS. The Trustees may authorize and designate an employee or agent of the Fund to execute any notice or other instrument in writing.

Section 8. DEPOSIT AND WITHDRAWAL OF FUNDS. All moneys received by the Trustees hereunder shall be deposited by them in such bank or banks as the Trustees may designate for that purpose, and all withdrawals of moneys from such account or accounts shall be made only by checks signed by the Trustees, except that the Trustees may, in their discretion, designate and authorize an employee or agent of the Fund to sign checks upon such separate and specific bank account or bank accounts as the Trustees may designate and establish for such purpose.

Section 9. SURETY BONDS. The Trustees and any employees of the Trustees who are empowered and authorized to sign checks as aforesaid shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees. Each such employee employed by the Trustees who may be engaged in handling moneys of the Trust Fund shall also be bonded by a duly authorized surety company in the same manner. The cost of the premium on such bonds shall be paid out of the Fund.

Article V

Selection of Remuneration Systems to Be Administered by the Fund

Section 1. ACCEPTANCE FOR ADMINISTRATION THROUGH THE FUND. As to each agreement for the receipt and distribution of remuneration entered into by the AFM, AFTRA, or the Unions jointly, and referred by one of them to the Trustees for their consideration, the Trustees, in their sole discretion, may decide whether or not the agreement is appropriate for administration through the Fund. An agreement will be accepted for administration through the Fund only if the Trustees, voting in accordance with Article VII, Section 3, agree to accept it. The refusal of the AFM or AFTRA to accept an agreement for administration by the Fund shall not be subject to arbitration. The acceptance of an agreement for administration by the Fund shall be in writing.

Section 2. HOLDING MONEY PENDING ACCEPTANCE FOR ADMINISTRATION. The Fund may hold moneys received pursuant to an agreement for the receipt and distribution of remuneration in an escrow account pending the Trustees' decision whether to accept the agreement for administration through the Fund. If the Trustees refuse acceptance, the moneys will be returned with any interest accumulated thereon and minus any administrative costs incurred to the AFM, AFTRA or the Unions jointly in accordance with the agreement for the receipt and distribution of remuneration.

Section 3. CONTINUATION OF ADMINISTRATION. Once an agreement for the receipt and distribution of remuneration has been accepted for administration through the Fund, it shall continue to be administered through the Fund until such time as the Trustees, voting in accordance with Article VII, Section 3, agree that such administration is no longer appropriate. If the Trustees, voting in accordance with Article VII, Section 3, disagree over whether continued administration is appropriate, they will attempt to resolve their difference on the matter. If they cannot resolve their difference on the matter, they agree to submit the dispute to mediation administered by the American Arbitration Association. If mediation fails to resolve the dispute, the agreement for the receipt and distribution of remuneration shall be discontinued for administration through the Fund upon the vote of the Trustees for one Union, voting in accordance with Article VII, Section 3.

Article VI

Plan of Payments and Distributions

Section 1. PAYMENTS. The Trustees shall have full authority to determine all questions of the nature and amount of payments to be provided to artists consistent with the relevant agreements for the receipt and distribution of remuneration.

Section 2. ELIGIBILITY FOR PAYMENTS. The Trustees shall have full authority to determine eligibility requirements for payments, consistent with the relevant agreements for the receipt and distribution of remuneration, and to adopt rules and regulations setting forth the same, which shall be binding on the artists.

Section 3. METHOD OF PROVIDING PAYMENTS. The payments shall be provided and maintained by such means as the Trustees in their sole discretion shall determine.

Section 4. WRITTEN PLAN OF PAYMENTS AND DISTRIBUTIONS. The detailed basis upon which payments are to be made pursuant to each agreement for the receipt and distribution of remuneration shall be specified in writing by appropriate action of the Trustees subject, however, to such changes or modifications by the Trustees from time to time as they in their discretion may determine. All such changes or modifications shall similarly be specified in writing by appropriate resolution of the Trustees.

Section 5. DETERMINING CLAIMS FOR PAYMENTS. The Trustees shall have full authority to determine all claims for payments, provided that they may delegate to the duly designated administrators of the Fund authority to determine such claims initially. The administrators' initial determination shall be submitted to the Trustees for final determination. An individual who believes that he or she has been adversely affected by the administrators' or Trustees' determinations regarding payment of benefits may submit a written appeal to the Trustees. The decision of the Trustees shall be final.

Article VII

Meetings and Decision of Trustees

Section 1. MEETING OF TRUSTEES. Meetings of the Trustees shall be held at such place or places as may be agreed upon by the Trustees.

Section 2. ACTION BY TRUSTEES WITHOUT MEETING. The Trustees may also take action in writing without a meeting.

Section 3. AGREEMENT OF THE TRUSTEES. All actions of the Trustees shall be by agreement, with the AFM Trustees casting one vote, and the AFTRA Trustees casting one vote. In the event that any matter presented for decision cannot be decided because of a failure of agreement, the matter may be submitted for arbitration in accordance with Article VIII.

Section 4. MINUTES OF MEETINGS. The Trustees shall keep minutes of all meetings but such minutes need not be verbatim.

Article VIII Arbitration

Section 1. APPLICATION OF THIS ARTICLE. A Trustee may apply to the American Arbitration Association in the area where the Fund maintains its principal office for the designation of an arbitrator who will decide any disputes between the Trustees or any other matter submitted to arbitration in accordance with the provisions of Article VII, Section 3. The decision of the arbitrator shall be final and binding. Decisions to accept an agreement for the receipt and distribution of remuneration for administration through the Fund, pursuant to Article V, Section 1, shall not be subject to arbitration.

Section 2. EXPENSES OF ARBITRATION. The cost and expense incidental to any arbitration proceeding, including the fee, if any, of the impartial arbitrator, shall be a proper charge against the Fund and the Trustees are authorized and directed to pay such charges.

Article IX Execution of Trust Agreement

Section 1. COUNTERPARTS. This Trust Agreement may be executed in counterparts.

Article X Amendment to Trust Agreement

Section 1. AMENDMENT BY TRUSTEES. This Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and annexed hereto. The Trustees shall have full discretion to fix the effective date of any amendment.

Article XI
Termination of Trust

Section 1. BY THE TRUSTEES. This Agreement and Declaration of Trust may be terminated by an instrument in writing executed by the Trustees when there is no longer in force and effect an agreement for the receipt and distribution of remuneration which is accepted for administration by the Fund.

Section 2. PROCEDURE ON TERMINATION. In the event of the termination of this Agreement and Declaration of Trust, the Trustees shall apply the Fund to pay or to provide for the payment of any and all obligations of the Fund and shall distribute and apply any remaining surplus in such a manner as will in their opinion best effectuate the purpose of the Fund; provided, however, that no part of the corpus or income of said Fund shall be used for or diverted to purposes other than for the benefit of the artists eligible for benefits under the agreements for the receipt and distribution of remuneration administered by the Fund, or the administrative expenses of the Fund or other payments in accordance with the provisions of the Fund.

Section 3. NOTIFICATION OF TERMINATION. Upon termination of the Fund, the Trustees shall notify each necessary party, and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

Article XII
Miscellaneous Provisions

Section 1. GOVERNING LAW. This Agreement and Declaration of Trust shall be construed under the laws of the State of New York applicable to contracts made and to be performed within the County and State of New York (without regard to any conflict of laws provision), and venue for any dispute arising under this Agreement and Declaration of Trust shall be in New York.

Section 2. NOTIFICATION TO TRUSTEES. The address of each of the Trustees shall be that stated on the signature page of this Agreement and Declaration of Trust. Any change of address shall be effected by written notice to the Trustees.

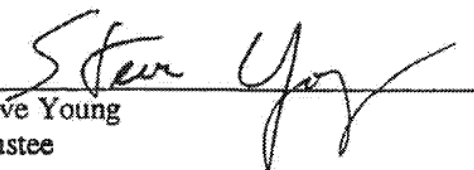
Section 3. SEVERABILITY. Should any provision in this Trust Agreement or in the rules and regulations adopted thereunder be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the provisions contained therein unless such illegality shall make impossible or impractical the functioning of the Trust and the Plan, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

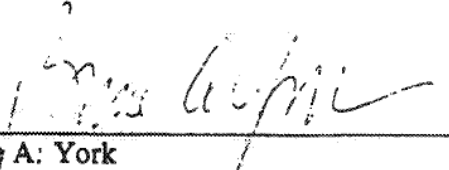
Section 4. VESTED RIGHTS. No artist or any person claiming by or through such artist, including the artist's family, dependents, beneficiary and/or legal representative, shall have any right, title or interest in or to the Fund or any property of the Fund or any part thereof except as may be specifically determined by the Trustees.

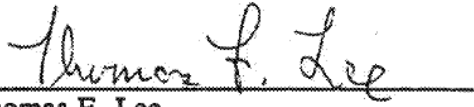
Section 5. ENCUMBRANCE OF PAYMENTS. No moneys, property or equity, of any nature whatsoever, in the Fund, or policies or benefits or moneys payable therefrom, shall be subject in any manner by any artist or person claiming through such artist to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

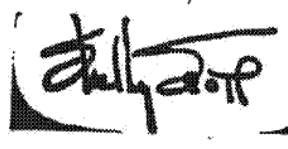
Section 6. EXPENSES OF THE TRUSTEES. All expenses of the Trustees incurred in the performance of their duties may be chargeable to the Fund at the discretion of the Trustees. All other expenses incurred pursuant to Article IV hereof shall be paid by the Fund.

Section 7. NO EMPLOYER CONTRIBUTIONS PERMITTED. The Fund shall not accept contributions from any employer or association of employers who employ artists represented by the AFM or AFTRA, and shall not enter into agreements for the receipt and distribution of remuneration with such employers or associations of employers.


Steve Young
Trustee


Bruce A. York
Trustee


Thomas F. Lee
Trustee


Shelby Scott
Trustee

From: Ray Hair
Sent: Thursday, December 27, 2012 1:00 PM
To: Jennifer Garner
Subject: FW: Data Purchase and Service Agreement - AFM & SAG-AFTRA Fund
Attachments: union trust services agreement version 2 December 27 2012.doc

Importance: High

Ray Hair, International President
American Federation of Musicians
of the US and Canada
1501 Broadway, Suite 600
New York, NY 10036
212-869-1330, ext 1212
rhair@afm.org

-----Original Message-----

From: Patricia Polach [mailto:ppolach@bredhoff.com]
Sent: Thursday, December 27, 2012 2:07 PM
To: Ray Hair, Dennis Dreith
Cc: Jeff Freund
Subject: Data Purchase and Service Agreement - AFM & SAG-AFTRA Fund
Importance: High

Dear Ray and Dennis:

You each asked me earlier (Dennis on behalf of the AFM & SAG-AFTRA Fund, and Ray on behalf of AFM) to explore whether, and how, the AFM and SAG-AFTRA could enter into a service agreement with the Fund, pursuant to which the Fund would commence paying the Unions for the data and services that the Unions provide for the Fund's operations. Article IV, Section 3.O of the Agreement and Declaration of Trust explicitly allows the Fund to purchase data from the Unions, and by extension, the purchase of other services at a reasonable price from the Unions should fall within the general powers of the Trustees under the Fund's Agreement and Declaration of Trust.

As you both know, I obtained assistance from Jenner & Block. Among other things, they prepared a first draft of a "Data Purchase and Services Agreement," which I modified slightly. The draft Agreement expresses the contract fee as a percentage of Fund distributions -- but doesn't suggest what the percentage should be. It is attached for your review.

At some point, you will want to discuss with Duncan, but I have only sent it to the two of you.

Please let me know if you have any questions and how you would like to proceed.

Hope you are both having a good holiday season--

Trish

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

Exhibit
DEFS115
2/11/2021
Dreith

DRAFT 2 – December 27, 2012

DATA PURCHASE AND SERVICES AGREEMENT

This Data Purchase and Services Agreement (“Agreement”), dated as of _____, 2013 (the “Effective Date”), is made by and between the American Federation of Musicians of the United States and Canada, AFL-CIO-CLC (“AFM”), the Screen Actors Guild - American Federation of Television and Radio Artists (“SAG-AFTRA”) and the AFM and SAG-AFTRA Intellectual Property Rights Distribution Fund (the “Fund”). AFM and SAG-AFTRA are sometimes referred to herein individually as a “Union” and collectively as the “Unions.” AFM, SAG-AFTRA and the Fund are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, by an Agreement and Declaration of Trust dated September 16, 1998, as amended and restated on July 26, 2012, the Unions formed the Fund to collect and distribute certain artist royalties that are appropriate for collective administration;

WHEREAS, the Unions have in the past provided to the Fund certain data, as well as certain services of outside counsel and in-house staff to assist the Fund in its operation and administration and to represent the interests of the Fund in various external matters, without being reimbursed for their costs thereof;

WHEREAS, the Agreement and Declaration of Trust authorizes the Trustees of the Fund to purchase relevant data from the Unions (and others) and to employ assistants; and

WHEREAS, the Trustees of the Fund have determined that it is reasonable and appropriate at this time to memorialize arrangements for the provision by the Unions to the Fund of certain data and assistance in exchange for reasonable compensation to the Unions from the Fund;

NOW, THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

1. Provision of Data. From and after the Effective Date, each Union shall provide the Fund the following data, in a manner comparable to the way such data has been provided immediately prior to the Effective Date:

- Access to member databases to enable the Fund to obtain identifying and contact information for members.
- Access to session reports and “B-forms,” or databases containing information derived therefrom, that in either case, identify the recordings made at recording sessions and provide identifying and contact information for performers (Union members and nonmembers) who performed at the session.

Each Union retains all its ownership rights in its data, and all such data shall be considered Confidential Information of the relevant Union subject to the provisions of Section 7. The Fund is authorized to, and shall, access, reproduce and use such data solely for purposes of distribution

of royalties collected by the Fund to the relevant persons. In its use of such data, the Fund further shall comply with the provisions of any applicable Union privacy policy of which such Union advises the Fund in writing from time to time.

2. Representation of Fund Interests. Each Union shall use commercially reasonable efforts to further the interests of the Fund and the Fund's beneficiaries through its participation in the following forums (or their successors):

- The board of SoundExchange, Inc.;
- The board of the Alliance of Artists and Record Companies;
- The musicFIRST Coalition;
- Activities under the auspices of the U.S. Copyright Office and other U.S. governmental entities; and
- Activities under the auspices of international entities such as the International Federation of Musicians, International Federation of Actors, World Intellectual Property Organization, Societies' Council for the Collective Management of Performers' Rights.

To the extent that the Fund may communicate to a Union particular interests, concerns or objectives relevant to the Unions' participation in the foregoing forums, each Union shall use commercially reasonable efforts promptly to address the Fund's requests in that regard, except to the extent the Union determines that such requests are contrary to the interests of its members.

3. Mandates. Each Union shall use commercially reasonable efforts to obtain from its members authorization to act as such members' representative for the purpose of collecting and distributing government-mandated or other compulsory royalties or remuneration payable to performers under U.S. or foreign law. Each Union shall use commercially reasonable efforts to extend to the Fund the benefit of such authorizations that the Union obtains. The Unions may fulfill the foregoing obligation by, for example, negotiating and signing together with the Fund, or authorizing the Fund to enter into, agreements with foreign collecting societies pursuant to which the Fund will be entitled to claim, and the foreign society will agree to pay to the Fund, foreign royalties owed to those U.S. performers for whom the Fund exercises a mandate on behalf of either or both Unions.

4. Other Services. From and after the Effective Date, it is not anticipated that either Union will provide the Fund material services in support of the Fund's operation and administration, except as specifically described above. However, the Unions shall not unreasonably refuse to provide the Fund incidental advice and assistance as the Fund may request from time to time.

5. Services in General. The foregoing data and services shall be provided in accordance with any schedule agreed upon between the Fund and a Union, or in the absence of such agreement, promptly upon the Fund's request. To the extent that a Union may provide the Fund any documents or other recorded information other than the data described in Section 1 (the

Fund's rights to which are also addressed in Section 1), and subject to Section 7, such Union hereby grants the Fund a nonexclusive, perpetual, worldwide license to reproduce, adapt, distribute, perform and display such item and authorize others to do the same for the Fund's purposes. At no time shall the Fund be deemed to be the employer of a Union's personnel providing services hereunder. Each Union, and not the Fund, shall be responsible for payment of compensation to its personnel, required payroll deductions, social security and Medicare contributions, and unemployment, disability and workers' compensation insurance, all as required under law from time to time.

6. Payment. In consideration of the foregoing, the Fund shall pay each Union, within 30 days after the conclusion of each of the Fund's distribution cycles, ___% of the amount distributed by the Fund in such distribution cycle. Each such payment shall be accompanied by a statement setting forth the computation of the payment amount. Such payment shall constitute complete compensation of the Unions and their personnel for providing the data and services contemplated by this Agreement. There shall be no additional charges or expense reimbursement associated with the Unions' provision of the data and services contemplated by this Agreement.

7. Confidentiality.

7.1. "Confidential Information" means any material or information that (i) a Party (the "Disclosing Party") treats as confidential; (ii) the Disclosing Party provides to another Party (the "Receiving Party") in connection with the performance of this Agreement; and (iii) the Receiving Party reasonably should recognize as being confidential material or information of the Disclosing Party. The Receiving Party shall not use the Disclosing Party's Confidential Information for any purpose other than the performance of this Agreement or enjoyment of benefits provided under this Agreement, and shall not disclose the Disclosing Party's Confidential Information to any person other than its directors, officers, employees and contractors who have a need to know such Confidential Information and are subject to a nondisclosure obligation comparable in scope to this Section 7.

7.2. Notwithstanding Paragraph 7.1, the Receiving Party may disclose any material or information that it can demonstrate is (i) or becomes publicly known through no fault of the Receiving Party; (ii) developed independently by the Receiving Party; (iii) known by the Receiving Party prior to its disclosure by the Disclosing Party; or (iv) rightfully obtained from a third party not obligated to preserve its confidentiality who did not receive the material or information directly or indirectly from the Receiving Party. The Receiving Party also may disclose materials or information to the extent required by a court or other governmental authority, provided that the Receiving Party (a) gives the Disclosing Party prompt notice of the disclosure, (b) uses reasonable efforts to resist disclosing the material or information, and (c) cooperates with the Disclosing Party on request to obtain a protective order or otherwise limit the disclosure.

7.3. The receiving Party acknowledges that its breach of this Section 7 would cause the Disclosing Party irreparable injury for which it would not have an adequate remedy at law. In the event of a breach, the Disclosing Party shall be entitled to injunctive relief in addition to any other remedies it may have at law or in equity.

8. Representations, Warranties and Covenants

8.1 Each Party represents and warrants that it has the right, power and authority to enter into and to perform this Agreement.

8.2 Each Union represents, warrants and covenants that the services it is to provide under this Agreement shall be provided (i) in a workmanlike manner; (ii) in accordance with the standards of care and diligence and the level of skill, knowledge and judgment normally practiced by organizations of a similar nature; and (iii) in compliance with all applicable laws and regulations.

8.3 Each Union represents, warrants and covenants that the data, and any other documents or other recorded information it may provide to the Fund in the performance of this Agreement, will not infringe or misappropriate any patent, copyright, trade secret, or other proprietary right of any third party or otherwise conflict with the rights of any third party.

9. Indemnity. Each Party shall defend, indemnify and hold harmless each other Party and its directors, officers and employees from and against any third party claims to the extent relating to or resulting from any breach of this Agreement by the indemnifying Party. The indemnifying Party shall have the right to exercise reasonable control over any litigation within the scope of this indemnity; provided, however, that the indemnified persons shall have the right to participate in any such litigation at their own expense insofar as it concerns claims against them. This indemnity shall be inapplicable to the extent that the indemnifying Party is not notified promptly of a claim and is prejudiced by the delay in notice. All indemnified persons shall cooperate to the extent necessary in the defense of any claim within the scope of this indemnity.

10. LIMITATION OF LIABILITY. EXCEPT FOR A CLAIM OF INDEMNIFICATION PURSUANT TO SECTION 9, OR FOR A BREACH OF SECTION 7, IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES.

11. Term and Termination of this Agreement. The term of this Agreement shall commence as of the Effective Date and shall continue thereafter unless terminated in accordance with this Section 11. As between each Union and the Fund, this Agreement may be terminated (i) at will upon one year's written notice to the other Party, or (ii) if the other Party has materially breached this Agreement and failed to remedy that breach within 30 days after receiving written notice of that breach, upon further written notice by the non-breaching Party. Termination of this Agreement as between one Union and the Fund shall not, by itself, cause this Agreement to terminate as between the other Union and the Fund. Upon the effective date of termination, the relevant Union shall no longer be obligated to provide data or services as described in Sections 1-5. The Fund shall pay the relevant Union in accordance with Section 6 for data or services rendered through the effective date of termination on a prorated basis over the Fund's then current distribution cycle. The provisions of Sections 7-13 shall survive the termination of this Agreement.

12. Notices. All notices sent under this Agreement shall be in writing and hand delivered or delivered by prepaid overnight courier. Notices shall be sent to the Parties at the following addresses or such other addresses as the Parties subsequently may provide:

If to AFM: _____

Attention: _____

Telephone: _____

If to SAG-AFTRA: _____

Attention: _____

Telephone: _____

If to the Fund: _____

Attention: _____

Telephone: _____

13. Miscellaneous.

13.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of _____, without regard to its conflict of laws principles.

13.2. Severability. The provisions of this Agreement are severable, and the unenforceability of any provision of this Agreement shall not affect the enforceability of the remainder of this Agreement.

13.3. Cumulative Rights and Remedies. The rights and remedies provided in this Agreement and all other rights and remedies available to a Party at law or in equity are, to the extent permitted by law, cumulative and not exclusive of any other right or remedy now or hereafter available at law or in equity.

13.4. Assignment. No Party may assign any of its rights or delegate any of its duties under this Agreement to any third party without the prior written consent of the other Parties, which shall not be withheld unreasonably. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted assigns.

13.5. Relationship of the Parties. Nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the Parties, or as authorizing any Party to act as agent for the other or to enter into contracts on behalf of any other Party.

13.6. Amendments. This Agreement may be modified or amended only by written agreement of the Parties.

13.7. Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior agreements between the Parties concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers.

AMERICAN FEDERATION OF MUSICIANS OF
THE UNITED STATES AND CANADA, AFL-CIO-CLC

By: _____

Name: _____

Title: _____

Date: _____

SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO
ARTISTS

By: _____

Name: _____

Title: _____

Date: _____

AFM & SAG-AFTRA INTELLECTUAL PROPERTY RIGHTS DISTRIBUTION FUND

By: _____

Name: _____

Title: _____

Date: _____

Hilversum, 25th January 2013

Re: Statement Sena remuneration and administrative cost percentage

Dear Dennis,

Please find enclosed the SENA statement of your article 12 rights. The net amount, as mentioned on the statement, has already been transferred to your bank account at the end of December 2012.

By this letter, we would like to inform you that the administrative cost percentage charged by Sena has been increased with retro-active effect from 2006 onwards to 16%.

The percentage of administrative costs regarding the years 2006-2009 used to be 11%, respectively 15% in 2010.

Why?

As you might be aware of, Sena has gone through a reorganization during the years 2010 and 2011.

A detailed analysis of the difference between the distribution obligation of the Dutch cash income (the sum of the amounts to be paid out in the future, at the end of 2011) and the distribution debt (the reserve created so that this obligation can be fulfilled) has in the meantime revealed that a deficit arose in previous years.

The withholding percentages used at the time were insufficient to cover the costs incurred during those years. During that period account was taken of a continuing significant increase in the collections as a result of which the deficit would be compensated, as well as with more slowly declining interest income.

The adapted collections policy in combination with worsening economic circumstances means one has to assume a more conservative estimate of the collections growth. With a view to compensating the deficit - that was largely caused by the one-off special expenditure in 2010 - within a foreseeable period, a decision was taken to increase the withholding percentage for both the open (period 2006-2011) and future years to 16 percent. For the open years this concerns both the payments already carried out and those still to be carried out. In addition the unclaimed remunerations over closed years will, until further notice, be added to the distribution debt. These changes will mean that the deficit on the distribution debt will have been cleared within a period of between 5 and 7 years. This additional measure has no effect on the results for 2011.

How does this affect your right holders in practice?

Sena has decided to correct this increase of administrative costs in multiple phases. We have started in 2012 with the corrections of the percentage of the administrative costs, on the remuneration transferred in the period 2006 and 2009 only.

In 2013, 2007 and 2010 shall be recalculated. Finally in 2014, 2008 shall be corrected.

Due to the fact that our period of limitation has been reduced from 5 to 3 years as of 2009 onward, 2009 and 2010 will be recalculated earlier than 2008.

I trust I informed you sufficiently. Should you have any further questions, please do not hesitate to contact me.

Best regards

Natalie Loop
Manager Distribution

From: Dennis Dreith
Sent: Friday, January 25, 2013 4:07 PM
To: Ray Hair (rhair@afm.org); Duncan Crabtree-Ireland (dci@sagaftra.org)
Subject: AFM & SAG-AFTRA Fund expense ratios
Attachments: Sena letter.docx

Hi Ray and Duncan,

First, thank you both for a very productive meeting last Friday. As a follow-up to that meeting, , as promised, I had our controller generate a more exact expense ratio than I was able to do off the top of my head. As you may recall, I reported that we had been traditionally holding that rate to around 7%, but that based on our budget and income I estimated that our rate for FY 2012/13 could climb to as high as 12%. Please understand that making this determination is not quite as easy as simply dividing our budget by the income (which is roughly the way I made the estimate, less a little guess work about reasonably deductions). This is due to the fact that the Fund operates under a Modified Cash basis of accounting so that we can amortize capital expenditures (i.e. any single item purchased or improvement exceeding \$1,500) over several years, but still budget for necessary purchases. What this means is that our budget will always be larger than our expense base for purposes of calculating an expense ratio (which is one of the reasons that I am reluctant to change the manner in which budgeting and expenses are determined). I am still not saying that there may not be a different way to do our accounting, it's just that I am unaware of a better way to accomplish what we need to do. Regardless, when we looked at the **2012 expense ratio** in detail, I am happy to report that it is currently just under **9.8%** (although we do anticipate that it will still climb yet slightly higher by the end of this fiscal year , but less than the 12% I projected).

I understand that this may make it more difficult to deduct a fixed service fee for the unions and still maintain an expense ratio of 10%, but I do think there will still be a way to accomplish this while still providing the Fund with all the resources necessary to effectively service our participants...it may just take a little creative thinking on all our parts. To that end, I will gladly schedule a meeting with our controller and our auditor (Jeff Goss of Miller, Kaplan & Arase) at your earliest convenience to explore these issues further.

To put matters in a bit of perspective about reasonable expense ratios, I have attached a letter I received today from Natalie Loop, Manager Distributions from SENA (Netherlands) regarding a change in their expense rate.

Best regards,

Dennis

Dennis Dreith
Administrator, FMSMF
12001 Ventura Place 5th Floor
Studio City, CA 91604
v. 818-755-7777 ext.810
F. 818-755-6786
www.fmsmf.org

From: Dennis Dreith

Sent: Thursday, May 30, 2013 6:29 PM

To: 'Duncan Crabtree-Ireland (dci@sagafta.org)'; 'Jon Joyce'; 'Stefanie Taub (Stefanie.Taub@sagafta.org)'; 'Ray Hair (rhair@afm.org)'; 'Sam Folio'; 'Bruce Bouton'

CC: 'Patricia Polach (ppolach@bredhoff.com)'; Shari Hoffman; Jo-Anne McGettrick; Nancy Carney

Subject: Updated budget

Attachments: Fiscal Year 2014 w_FY13 Actuals_1S.xlsx; Agenda Trustees Meeting 060413.docx

Hi Trustees, and related folks!

In preparation for our meeting on June 4, I have attached the proposed 2013-2014 budget and comparison of last year's budget and actual expenses. IN addition, I have included a proposed agenda. As usual, please let me know should you wish to add to or delete any items to the agenda.

I know you will experience quite a bit of "sticker shock" when you look at the proposed numbers for this year. However, please bear in mind that this includes some additional office space, a number of new hires, and the addition of me as the full-time administrator (along with the salary and benefits that come with that). Also, bear in mind that this is heading in exactly the direction many of you have asked us to do. Namely, a separation from the FMSMF, and the ability to process more royalty payments in a quicker manner. While not a complete separation from the FMSMF, this budget does reflect a tremendous shift in that direction.

As always, please feel free to contact with any questions or requests for additional information. IN addition, please let me know if you desire any6 one else to be invited to attend the meeting (the Fund's Auditor Jeff Goss??).

I am looking forward to seeing you and/or talking to you on the 4th. As usual, I will be circulating the Fund's conference Call information in a couple of days.

Best regards,

Dennis

**Exhibit
DEFS118**

2/11/2021
Dreith

AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund
Budget and Analysis for Fiscal Years 2013
Proposed Budget for Fiscal Year 2014

Act ID	Account Name	Budget 2014				Budget 2013				Expenses 2013				Under/(Over)
		Total Budget	ADM	GEN	SRD	AVD	SYM	Lease/FF/OT/EE's	General	SRD	AVD	SYM	Leased	Total Expenses
1410	Computers	22,000		22,000						1,796				1,796
1430	Equipment	26,000												
1450	Furniture & Fixtures	-								13,326				13,326
1470	Leasehold Improvements	10,898		10,898						10,700				10,700
1490	Systems	40,000		40,000					4,900					4,900
1510	Website	10,200		10,200					3,054					3,054
1620	Prepaid Insurance	3,500		3,500					7,908					7,908
6020	Bank Fees	13,115			9,500	3,600	15		14,850	10,405	3,167	25		17,237
6040	Printing (Distribution)	61,252		9,097	26,040	26,000	115		131,500	31,749	24,776	112		64,545
6050	Research	10,375			2,475	7,500	400		11,014	2,351	7,374	398	9,164	19,287
6110	Administrative	-							54,746	19,746				89,746
6120	Advertisement	31,225							28,225					28,225
6130	Dues & Subscriptions	15,474	349	3,900	905	814	8		4,589	1,332	945	8		6,874
6170	Delivery & Postage	10,640		5,300	3,530	1,200	610		5,312	2,909	1,016	608		9,845
6190	Maintenance/Repairs	22,059		6,850	4,738	456	15		816	538	338	14	14,671	16,377
6195	Loss on Asset Disposal	-							6,000					6,000
6230	Rent-Office Space	221,922		17,424	134,614	50,807	4,298		182,792	121,572	49,288	1,515		172,375
6240	Insurance-Business/Prop Etc	4,523	259	776	2,496	923	69		16,075	3,216	149	8		3,373
6245	Insurance-Other	12,554		12,554									1,046	1,046
6250	Business Office Expense - Licenses	-												
6260	Supplies-computer hardware	5					5		522	8,137	295			8,564
6270	Supplies-computer software	1,980		1,980					3,263	3,818	1,106	80		8,267
6280	Supplies-General/Office/Supplies	37,869	2,144	6,832	20,680	7,645	568		26,681	16,520	6,018	288	2,171	24,997
6285	Supplies-General/Office/Furn Equip	55,718	14,198	13,623	21,075	6,772	50		26,161	10,148	1,038	47	4,022	15,255
6290	Utilities (AC, Elec, Tel)	21,500		13,131	1,094	1,250	525			1,983	1,228	522	6,965	10,698
6310	Accounting	10		10					10					10
6320	Audit Fees	18,000		18,000					15,000	17,300				17,300
6350	Bank Management	76,111		76,111					57,083					57,083
6370	Consultant	45,282		26,082					39,066					39,066
6375	Consultant-Research	125,000												
6380	Equipment Lease	13,736			3,676	675								
6390	Legal	38,005		38,000						2,968			12,473	15,680
6510	Staff Salaries	315,342		517,023	985,341	389,405	34,793		306,640	73,954	13,831	283		16,397
6510	Contributions-Pension	2,597,400					5							
6530	Contributions-Retirement	192,756		41,079	81,274	33,102	2,037		567,383	298,618	20,947		246,504	1,440,092
6540	Insurance-Health	9,460		15,059	28,660	11,682	1,044		23,412	51,061	26,707	1,750	18,372	19,638
6560	Insurance-Health	3,253,355		71,084	156,466	95,982	6,501		46,000	18,361	8,643	1,494	7,886	42,861
6565	Fringe-Health Reimbursement Act	68,574		15,308	34,064	13,169	592		46,468	87,842	41,462	1,135	14,029	190,536
6570	Insurance-Life	11,113		237	558	220	16		16,122	30,477	16,475	917	5,079	69,070
6580	Insurance-Workers Comp	19,224		2,788	7,643	3,183	299		1088	330	162	11		731
6650	Payroll Taxes-Social Security	142,120		32,055	59,231	24,143	2,157		15,519	4,541	1,247	67	7,300	13,155
6660	Payroll Taxes-Medicare	33,312		4,572	13,852	5,646	505		36,654	18,712	1,281		14,150	88,316
6670	Payroll Taxes-FUTA	1,623		86	301	833	23		4,097	8,590	4,376	300	3,442	20,805
6680	Payroll Taxes-SUI	13,995		763	7,356	2,719	202		349	661	293	12	78	804
6690	Payroll Processing	5,719		298	2,882	1,066			2,662	5,473	2,471	107		11,517
6710	Seminar/Training	16,711		3,595	2,583		85		621	1,245	567	25	2,159	4,617
6720	Temporary Help	49,390			47,500				889	2,583	1,882	81		5,435
6810	Meals	2,916		600	7,882	4,000	465		24,248	7,366	3,241	460		24,448
6830	Parking	30,384		2,040	11,950	4,990	204		13,961	13,961	5,166	390		11,067
6850	Travel	29,315		13,429	2,000	10,336			12,208	12,208	3,633	8,677		19,517
Total		4,260,656	457,621	1,110,401	1,650,897	742,573	107,220	191,944	713,527	1,137,544	647,903	95,238	370,368	2,964,580

Cap Exp	27,754	25,822	-	-	-	-	-	-	53,576
Adm Exp	685,773	1,111,722	647,203	95,238	370,368	291,004	-	-	2,964,580
Total Exp	713,527	1,137,544	647,203	95,238	370,368	2,964,580	-	-	

AFM & AFTRA Fund Trustees Meeting

June 4, 2013 4:00 p.m.
11846 Ventura Boulevard Suite 300
Studio City, CA 91604

Agenda

1. Minutes of July 2012 meeting were previously approved via email poll (no action required)
2. Building Purchase
3. Review and Approval of Proposed FY2014 Budget
 - a. Comparison of 2013 Actual expenses to Proposed 2014 Budget
 - b. staff breakdown & description
 - c. allocation of staff and resources
4. Full-Time Administrator position/separation from FMSMF
5. AFM & SAG-AFTRA Service fees
6. AFM & SAG-AFTRA Fund branding
 - a. RAR (Recording Artist Royalties)
 - b. New website
7. Review of Collections and Distributions

From: Dennis Dreith on behalf of Dennis Dreith <ddreith@fmsmf.org>

Sent: Saturday, September 7, 2013 4:16 PM

To: 'Ray Hair (rhair@afm.org)'; 'Sam Folio'; 'Bruce Bouton'; 'Duncan Crabtree-Ireland (dci@sagaftra.org)'; 'Stefanie Taub'; 'Jon Joyce'

CC: 'Patricia Polach (ppolach@bredhoff.com)'

Subject: Admin Letter/Service Fee

Attachments: AV Participant_Sept2013_Administrator_Letter_ver1.doc; AV Participant_Sept2013_Administrator_Letter_ver2.doc; AV Participant_Sept2013_Administrator_Letter_ver3.doc

Dear Trustees,

Inasmuch as the upcoming Audiovisual Distribution will be the first time that we will be deducting the service fee agreed to at the last Trustee's Meeting, I thought it would be wise to confirm what is most desirable. At Duncan's suggestion I have put together 3 different versions of the Administrator's Letter. Not to put words in anyone's mouth or assume too much, I know that Ray and Duncan prefer to make no mention of the fee and simply include it in the Operating Expenses in the Unaudited Financial Statement, which is what I have done in Version 1. I am, however, concerned that the significant cost increase in expenses will raise some eyebrows from the membership or result in needless and unwarranted criticism about a completely justifiable expense. I will gladly present this (or not) in any manner that you, the Trustees desire, and am only providing these as options to consider.

Consequently, following are the 3 versions of the Admin Letter.

- Ver.1 makes no mention of the Service Fee, , and includes the Service Fee in the Operating Expenses without any explanation or mention.
- Ver.2 includes a complimentary explanation and justification of the Service Fee (giving the unions credit for establishing the Fund, providing data, etc.) , but only includes the Service Fee in the Operating Expenses without identifying it separately in the Financial Statement.
- Ver.3 includes the same language explaining the Service Fee, and includes the Service Fee as a separate line item in the Financial Statement.

A 4th option could be to identify the Service Fee as a separate item in the Financial Statement, but make no mention of it in the body of the letter itself. I think that would be a mistake and could raise more unnecessary questions.

If I do NOT hear from any of you, I will assume that version 1 is preferred, and that is what we will send to the printer to be mailed with the Distribution Packets.

Regards,

Dennis

Dennis Dreith

AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund
11846 Ventura Blvd., Suite 300
Studio City, CA. 91604

Phone: (818) 755-7777 ext.810

FAX: (818) 755-6786

This communication is confidential and may contain privileged information. It is intended only for the person(s) to whom it is addressed. If you have received this message in error, please notify the sender immediately and delete this message without reading, copying or forwarding it to anyone.

Exhibit
DEFS120
2/11/2021
Dreith

September 30, 2013

Dear Participant,

I am very happy to report that you are receiving the enclosed payment as a result of ongoing revenues from our audiovisual agreement with AIE (the Spanish rights collective). As reported previously, these payments are a unique form of royalties covering featured and non-featured performance rights, for both licensed sound recordings and underscore. The payment you are receiving means that you performed in one or more of the categories (which are identified on the enclosed statement) on a motion picture or television film broadcast on Spanish television.

This payment is being made by the Audiovisual Division of the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund. ***This distribution is in addition to any payments that you may receive from the Sound Recording Division of the AFM & SAG-AFTRA Fund.*** Please note that there has been a change in the formula for featured underscore performers to make the ratio of distributions between featured and non-featured underscore performers more equitable. This change is the result of ongoing discussions with AIE and modifications to the Audiovisual Distribution Guidelines (see enclosed distribution flow chart for more details).

While this represents ongoing distributions from Spain *only* at this time, we are hopeful that there will be collectives in other countries providing such rights prospectively. In order to deal with the complexities of making this distribution and in anticipation of similar payments being made from other collectives, we have continued to increase staff and services to facilitate the distribution of these rights.

Questions about this distribution should be directed to Shari Hoffman, Manager of the Audiovisual Division of the AFM & SAG-AFTRA Fund at 818-255-7980, ext.1; or via fax at 818-255-7981. You can also access the Audiovisual Division by going to the AFM & SAG-AFTRA Fund website at www.raroyalties.org and following the Audiovisual Division link located on the Home Page.

Enclosures (Included with this mailing):

- 1) A check covering your share of royalties detailed above;
- 2) A statement detailing your personal information, which also identifies each motion picture or television film and/or recording licensed for use into such films. It also identifies (when applicable) whether the payment is for your performance as a non-featured or featured performance;
- 3) A flowchart describing the Audiovisual Royalty collections and distributions;

- 4) A Beneficiary Designation Form (and instructions) **only for Performers who have not previously returned a Designation Form to the Fund;**
- 5) An Inquiry Form (with pre-addressed return envelope). You can use the Inquiry Form to change your address, provide additional information to the Fund, or to claim that you are entitled to payment for a recording on the Master List for which you have not been credited.
- 6) Direct Deposit/Go Paperless Enrollment Forms ;
- 7) An Online Access Agreement;
- 8) A reply envelope to be used for Items 4, 5, & 6 above.

Un-audited Financial Summary

	2013	2012
Total Contributions Available for Distribution	\$3,156,592.90	\$ 3,665,038.05
Interest Earned	170.86	132.13
Less Operating Expenses	-402,773.61	-316,440.27
Less Omission Reserve	-170.86	-132.13
Net of Expenses & Reserve	\$2,753,819.29	\$ 3,348,597.78

This distribution represents a sizable investment of Fund resources in terms of computer programming, research and general administrative activities. This distribution is enormously complex given that the identity and location of thousands of featured and non-featured musicians and vocalists must be researched by the Fund. In addition, the Fund must identify what portion of each film broadcast on Spanish television contains any performance of a U.S. musician or vocalist. As this is a relatively new Fund, we are continuing to make additional refinements to our process and services, such as the introduction of the Direct Deposit and Paperless Option, ***which we strongly encourage to save time and money for both you and the Fund!***

Wishing you continued success,



Dennis Dreith
Fund Administrator

September 30, 2013

Dear Participant,

I am very happy to report that you are receiving the enclosed payment as a result of ongoing revenues from our audiovisual agreement with AIE (the Spanish rights collective). As reported previously, these payments are a unique form of royalties covering featured and non-featured performance rights, for both licensed sound recordings and underscore. The payment you are receiving means that you performed in one or more of the categories (which are identified on the enclosed statement) on a motion picture or television film broadcast on Spanish television.

This payment is being made by the Audiovisual Division of the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund. ***This distribution is in addition to any payments that you may receive from the Sound Recording Division of the AFM & SAG-AFTRA Fund.*** Please note that there has been a change in the formula for featured underscore performers to make the ratio of distributions between featured and non-featured underscore performers more equitable. This change is the result of ongoing discussions with AIE and modifications to the Audiovisual Distribution Guidelines (see enclosed distribution flow chart for more details).

While this represents ongoing distributions from Spain *only* at this time, we are hopeful that there will be collectives in other countries providing such rights prospectively. In order to deal with the complexities of making this distribution and in anticipation of similar payments being made from other collectives, we have continued to increase staff and services to facilitate the distribution of these rights. In addition, it bears mentioning that since the inception of the AFM & SAG-AFTRA Fund, both the AFM and SAG-AFTRA were responsible not only for the creation of the Fund, but each union also invested significant financial resources to bring about the necessary changes in the U.S. Copyright legislation to make the Fund a reality. Throughout this entire time, the unions – free of charge – have provided data necessary to identify and pay the entitled performers. While in the early days of the Fund's operation it was impossible to compensate the unions for their valuable service, the Fund has now grown to the point where such compensation is not only possible, but highly warranted. Consequently, beginning with this distribution, the Operating Expenses also include a service fee paid to the unions to cover the costs of their support of the Fund.

Questions about this distribution should be directed to Shari Hoffman, Manager of the Audiovisual Division of the AFM & SAG-AFTRA Fund at 818-255-7980, ext.1; or via fax at 818-255-7981. You can also access the Audiovisual Division by going to the AFM & SAG-AFTRA Fund website at www.raroyalties.org and following the Audiovisual Division link located on the Home Page.

Enclosures (Included with this mailing):

- 1) A check covering your share of royalties detailed above;
- 2) A statement detailing your personal information, which also identifies each motion picture or television film and/or recording licensed for use into such films. It also identifies (when applicable) whether the payment is for your performance as a non-featured or featured performance;
- 3) A flowchart describing the Audiovisual Royalty collections and distributions;
- 4) A Beneficiary Designation Form (and instructions) **only for Performers who have not previously returned a Designation Form to the Fund;**
- 5) An Inquiry Form (with pre-addressed return envelope). You can use the Inquiry Form to change your address, provide additional information to the Fund, or to claim that you are entitled to payment for a recording on the Master List for which you have not been credited.
- 6) Direct Deposit/Go Paperless Enrollment Forms;
- 7) An Online Access Agreement;
- 8) A reply envelope to be used for Items 4, 5, & 6 above.

Un-audited Financial Summary

	2013	2012
Total Contributions Available for Distribution	\$3,156,592.90	\$ 3,665,038.05
Interest Earned	170.86	132.13
Less Operating Expenses	-402,773.61	-316,440.27
Less Omission Reserve	-170.86	-132.13
Net of Expenses & Reserve	\$2,753,819.29	\$ 3,348,597.78

This distribution represents a sizable investment of Fund resources in terms of computer programming, research and general administrative activities. This distribution is enormously complex given that the identity and location of thousands of featured and non-featured musicians and vocalists must be researched by the Fund. In addition, the Fund must identify what portion of each film broadcast on Spanish television contains any performance of a U.S. musician or vocalist. As this is a relatively new Fund, we are continuing to make additional refinements to our process and services, such as the introduction of the Direct Deposit and Paperless Option, ***which we strongly encourage to save time and money for both you and the Fund!***

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- 6) Direct Deposit/Go Paperless Enrollment Forms;
- 7) An Online Access Agreement;
- 8) A reply envelope to be used for Items 4, 5, & 6 above.

Un-audited Financial Summary

	2013	2012
Total Contributions Available for Distribution	\$3,156,592.90	\$ 3,665,038.05
Interest Earned	170.86	132.13
Less Operating Expenses	-317,603.94	-316,440.27
Less Service Fee	-85,169.67	-
Less Omission Reserve	-170.86	-132.13
Net of Expenses & Reserve	\$2,753,819.29	\$3,348,597.78

This distribution represents a sizable investment of Fund resources in terms of computer programming, research and general administrative activities. This distribution is enormously complex given that the identity and location of thousands of featured and non-featured musicians and vocalists must be researched by the Fund. In addition, the Fund must identify what portion of each film broadcast on Spanish television contains any performance of a U.S. musician or vocalist. As this is a relatively new Fund, we are continuing to make additional refinements to our process and services, such as the introduction of the Direct Deposit and Paperless Option, ***which we strongly encourage to save time and money for both you and the Fund!***

Wishing you continued success,



Dennis Dreith
Fund Administrator

From: Dennis Dreith

Sent: Monday, September 9, 2013 12:31 AM

To: 'Ray Hair (rhair@afm.org)'; 'Sam Folio'; 'Bruce Bouton'; 'Duncan Crabtree-Ireland (dci@sagaftra.org)'; 'Jon Joyce'; 'Stefanie Taub'

Subject: Administrator Compensation

Importance: High

Dear Trustees,

As you know, by now we had planned that my transition to full-time Administrator for the AFM & SAG-AFTRA Fund would have been complete and I would have left my position as Administrator for the FMSMF. However, as the AFM negotiations with the AMPTP have continued longer than expected, this has not been possible just yet. To resign my position with the FMSMF prior to the conclusion of the negotiation would undoubtedly put the AFM at a bargaining disadvantage since the issues of greater control over the governance of the FMSMF and the appointment of my successor have been topics of bargaining. Therefore, I have continued to fill both positions, in essence maintaining two full-time positions. In addition, the duties of the AFM & SAG-AFTRA Fund have been escalating significantly between increased collections, distribution responsibilities, and of course the substantial activities surrounding the purchase of the new building. To ensure that I maintain the highest level of service to both organizations, my work days have become longer and longer, and I have consistently worked weekends and holidays.

What you may not be aware of is that for this entire fiscal year (nearly 6 months now) I have received no compensation whatsoever. Since we had not made the transition from the FMSMF I did not feel it appropriate to begin collecting a salary from the AFM & SAG-AFTRA Fund, nor have I asked for anything previously. However, the responsibilities and commitment are such, that I feel we do need to address this at this time. I am not asking that I be provided my full salary until I am settled in full-time at the Fund, but I am proposing that retroactive to April 1 (the start of our fiscal year) I receive \$12,000 per month until we can affect my resignation from the FMSMF and transition to full-time at the AFM & SAG-AFTRA Fund. I want to point out that this is well below half of the salary that was approved by the Trustees, and it does not include any benefits or employer taxes. Consequently, a monthly payment of this amount will put this well below what we budgeted for or we would have spent, had I begun in mid-July or August as originally expected.

I know that all of you are also working a tremendous number of hours and making substantial personal sacrifices. However, it does not seem reasonable to provide the hours, commitment and expertise that I am absent any compensation.

I am eager to discuss any and all aspects of this with any of you personally or with a group should that be desired. I also do not want intimate that my proposal is cast in concrete, nor should it be taken as ultimatum in any manner whatsoever. I am rather merely bringing a matter to your attention that you may not be aware of in the hope that you will be able to address it. Of course, should you want more details about the activities I have been engaged and the hours spent doing so, I will be happy to provide that. However, this email is already lengthy, and in view of the volume of lengthy emails you have been receiving from me of late, I did not want to wear out my welcome.

Regardless, I want you to know that I am very eager to meet the challenges that lie ahead, and am looking forward to some incredibly exciting times in the knowledge that we can do great things together.

Inasmuch as the AMPTP is (to best of our knowledge) is unaware of my plans, this email should be kept in confidence. I would ask that you not share it with anyone or discuss this outside of our group.

Thank you in advance for your kind consideration of this matter.

Best regards,

Dennis

Dennis Dreith

AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund

11846 Ventura Blvd., Suite 300

Studio City, CA. 91604

Phone: (818) 755-7777 ext.810

FAX: (818) 755-6786

This communication is confidential and may contain privileged information. It is intended only for the person(s) to whom it is addressed. If you have received this message in error, please notify the sender immediately and delete this message without reading, copying or forwarding it to anyone.

Exhibit
DEFS123
2/12/2021
Dreith

Review and Discussion of Union Service Fees

In July of 2013, SAG-AFTRA, the AFM ("unions") and the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund ("Fund") entered into an agreement for the unions to provide data and services to the Fund in exchange for a fee equal to 3% of the distributable amount of distributions. Since inception of the agreement, the Fund has paid \$3,517,931 to the unions as follows:

2013 - \$ 387,628
2014 - \$ 562,554
2015 - \$ 824,037
2016 - \$1,743,712

The Services listed in the agreement are:

- Access to member databases to enable the Fund to obtain identifying and contact information for members.
- Access to session reports and "B-forms," or databases containing information derived therefrom, that in either case, identify the recordings made at recording sessions and provide identifying and contact information for performers (Union, members and nonmembers) who performed at the session.
- Representation of Fund Interests through participation in the following forums:
 - The board of SoundExchange, Inc.;
 - The board of the Alliance of Artists and Record Companies;
 - The musicFIRST Coalition;
 - Activities under the auspices of the U.S. Copyright Office and other U.S. governmental entities; and
 - Activities under the auspices of international entities such as the International Federation of Musicians, International Federation of Actors, World Intellectual Property Organization, Societies' Council for the Collective Management of Performers' Rights.
- Use of mandates

I don't believe the Fund can accurately place a value on each item, but we can at least examine the extent of each service in the hope that the unions can place such a value on them.

Access to member databases to enable the Fund to obtain identifying and contact information for members:

What is provided by the AFM is essentially the exact same info that any AFM member has without additional charge. The AFM does provide a bulk data dump once or twice per year that

over and above what a regular AFM member would have access too, but this is just what is already in the AFM system.

SAG-AFTRA does not provide access to an online database, but does provide a data dump containing members names, addresses and the first 5 digits of members Social Security numbers. This is a secondary source of information to the Fund to help verify the accuracy of the information in the Fund's database

Value/actual cost to the unions: ?? Possibly a few hundred dollars to each union

Access to session reports and "B-forms," or databases containing information derived therefrom:

The AFM does not provide these directly. Rather, they are gathered from the various AFM Locals at no cost or effort on the part of the Federation (AFM). Similarly, SAG-AFTRA Does not provide these to the Fund. It does, however, allow Fund staff (at Fund expense) access to examine the session reports on site. Many of the SAG-AFTRA session reports are provided directly by the vocal contractors.

Value/actual cost to the unions: It's difficult to place a dollar value on this, but the cost (if any) to the unions would seem negligible

Representation of the SounExchange Board

Inasmuch as the overwhelming majority of the revenue to the Fund passes through SoundExchange, representation of that Board is significant. However, it would seem that at least half of the activity of such representation is on behalf of the unions Featured performers. Nonetheless, it would seem that the cost of attending meetings of the SX Board could be quantified and what portion of such costs can be attributable to Fund representation.

Value/actual cost to the unions: TBD by unions

The board of the Alliance of Artists and Record Companies (AARC)

No revenue passes through AARC to the Fund, nor is AARC involved in the claims, collections or distributions to and/or from the Fund. AARC and the Fund do have a large number of bi-lateral agreements that have been negotiated jointly, but which are administered independently. However, the unions have little involvement in those activities, nor have the unions incurred any costs on behalf of the Fund with respect to representation of the AARC Board. I assume that the union's representation of the AARC Board has more to do with representation of Featured Artist members of the unions than with representation of non-Featured performers.

Value/actual cost to the unions: negligible if any

Activities under the auspices of the U.S. Copyright Office and other U.S. governmental entities

All claims to the U.S. Copyright Office are made by the Fund. I am unaware of any activities conducted by the unions with respect to the claims or other action regarding this agency. I do know that the AFM President and I assume that a representative of SAG-AFTRA also make an annual appearance before the CRB regarding rate settings. I have no way of quantifying the cost of these activities or their monetary value to the Fund, but assume that the unions can quantify this amount.

Value/actual cost to the unions: TBD by unions

The musicFIRST Coalition

No doubt participation in musicFIRST is important to the long-term growth of the Fund. This is also an area in which I feel the Fund itself should be more deeply involved. While I'm certain union involvement has significantly benefitted the Fund, it is impossible for us to quantify the value or place a dollar value on the cost to the unions for this since we have never received any reports of what the unions' activities have been with respect to this. It also seems that a portion of the activity of the unions in this regard is in relation to their representation of their Featured Artist members, and any allocation of costs should be made with this in mind.

Value/actual cost to the unions: TBD by unions

Activities under the auspices of international entities such as the International Federation of Musicians, International Federation of Actors

I believe these are activities the unions undertake independent of the Fund, and would be involved in regardless of the Fund's existence. If there are any activities or benefits to the Fund, I believe these are purely incidental. If this is incorrect, perhaps the unions could quantify the activities undertaken and the attendant costs associated with such activities.

Value/actual cost to the unions: negligible if any

World Intellectual Property Organization

I know that the unions participated in the Beijing Conference regarding the Audiovisual Treaty. However, what if any of those activities had to do with the Fund is unknown to us. The Fund is actively involved in audiovisual agreements and ongoing negotiations, but those outside of any WIPO activities, at least to date. Regardless, it would be helpful for the unions to quantify any participation and/or WIPO activities undertaken on the Fund's behalf.

Value/actual cost to the unions: TBD by unions

Societies' Council for the Collective Management of Performers' Rights (SCAPR)

While the Fund has been quite active in SCAPR, and has borne the costs for such participation, I believe the involvement of the unions has been tangential at most. If anything, it is the Fund's membership in SCAPR that has facilitated the unions attendance at various SCAPR forums.

Value/actual cost to the unions: negligible if any

Use of mandates

Clearly, the use of the union's mandates is of tremendous significance and value. Also, resolving mandate conflicts does require union intervention, and expenditure of resources. On the other hand, if it were not possible for the Fund to rely on the mandates of the unions, it would be necessary to either set up a system similar to SX where performers register, or for the unions to process the claims and pay the royalties directly to non-featured performers (both union members and non-members).

Value/actual cost to the unions: TBD by unions

For the sake of clarity, I am not suggesting that the items contained herein are of no value to the Fund, or that there is not a cost to the unions for providing them, but rather that these are not facts that can be determined by the Fund (at least with respect to the cost to the unions). With respect to their value, that in most cases is subjective rather than objective. There is one exception that is not specifically included in the Service Agreement that the Fund has derived a direct benefit from. Namely, Bob Hadl has been assisting the Fund with various AV matters and was instrumental in the GVL/GWFF AV agreement. Clearly, the time Bob has spent working on these matters is quantifiable, and up to this point all of these services have been paid for by SAG-AFTRA.

Initially, the unions expended considerable capital to help create the legislation making royalties to performers a possibility and in establishing the Fund to process those royalties. However, the investment made by the unions has most certainly been paid back (possibly several times over) at this juncture. As the distributions continue to increase significantly, so do the service fees. So much so that at some point I am concerned as to the perception of these fees and the attention they may generate. To lessen any negativity about these fees, perhaps an assessment of the cost and potential value of the services provided (rather than a simple percentage) would be a more prudent procedure going forward.

From: TheDirtyswift
To: Dennis Dreith
Subject: Re: Plaintive Request
Date: Tuesday, June 12, 2018 10:21:34 AM

Kevin Risto
[REDACTED]

On Jun 12, 2018, at 10:03 AM, Dennis Dreith <ddreith@teg-intl.com> wrote:

Hey Swift....I can call you if you send me a phone number...or you can call me at [REDACTED]
[REDACTED]

From: TheDirtyswift <thedirtyswift@gmail.com>
Sent: Monday, June 11, 2018 7:47 PM
To: Dennis Dreith <ddreith@teg-intl.com>
Subject: Re: Plaintive Request

Sure thing, does 10AM work for you?

- Swift

On Jun 11, 2018, at 7:39 PM, Dennis Dreith <ddreith@teg-intl.com> wrote:

Great....and Swift, perhaps a phone call will be the best way to proceed. I am available tomorrow morning if that works for you. Feel free to call my cell phone [REDACTED] or send me your number if you prefer.

Dennis

From: Bruce Wayne <bw@brucewayne.com>
Sent: Monday, June 11, 2018 12:54 PM
To: Dirty Swift <thedirtyswift@gmail.com>; Dennis Dreith <ddreith@teg-intl.com>
Cc: Shari Hoffman <shoffman@teg-intl.com>
Subject: Plaintive Request

Hey Dennis,

Per our conversation; I spoke to Swift about your interest in him being a plaintive for the Class Action Suite. He would like more information and is

Exhibit
DEFS133
2/12/2021
Dreith

DREITH_0136

open to talk about this with you in detail.

Take it from here gentleman!!

"Be Your Own Hero"

Bruce Wayne

CEO | Founder

Bruce Wayne LLC.

Intellectual Property Consultant Firm

[LinkedIn](#) | [Facebook](#) | [Instagram](#) | [Twitter](#)

<image001.png>

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Exhibit 5

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 ---oOo---

4

5 KEVIN RISTO, on behalf of
himself and all others

6 similarly situated,

7 Plaintiffs,

8 vs.

No.

2:18-cv-07241-CAS-PLA

9

SCREEN ACTORS GUILD-AMERICAN
10 FEDERATION OF TELEVISION AND
RADIO ARTISTS, a Delaware
11 corporation; AMERICAN
FEDERATION OF MUSICIANS OF THE
12 UNITED STATES AND CANADA, a
California nonprofit
13 corporation, et al.,

14 Defendants.

15 _____/

16

17 VIDEOTAPED AND VIDEOCONFERENCED DEPOSITION OF

18 TINO GAGLIARDI

19 Friday, October 9, 2020

20

21

22

23 Stenographically Reported by:

24 GINA V. CARBONE, CSR, RPR, RMR, CRR, CCRR

25 California State Lic. No. 8249

1 Marquis Theatre.

2 MS. McCONNELL: I was in elementary school.

3 THE WITNESS: There you go.

4 MR. THOMAS: Not to brag.

5 MS. McCONNELL: Thought I'd throw it out
6 there.

7 BY MR. BRANCOLINI:

8 Q. So you -- we can put a button on this. So
9 you don't believe that -- sorry. Let's back up for
10 a second.

11 Looking at the inception of the service
12 fees, still looking at Interrogatory Response No. 8,
13 from the inception of the service fee and the first
14 payment of 193,814 per union, to 2018, the most
15 recent year that we have available audits for,
16 there's essentially a 400 percent increase paid as a
17 service fee to the Fund -- sorry, to the unions by
18 the Fund.

19 You -- having worked on the union side
20 during that 2014-2018 period, you -- could -- you
21 don't have any -- sorry. I want to make sure that I
22 don't misstate your previous testimony.

23 A. Thank you.

24 Q. You don't have -- on the union side, you
25 don't have anything necessarily specifically that

1 you can peg that 400 percent increase to, but you
2 don't find it -- would it be accurate to say you
3 don't find it unreasonable?

4 A. I do not find it unreasonable.

5 Q. Have any of the other trustees ever
6 expressed any concern to you about the amount of the
7 service fee?

8 A. No.

9 Q. And since you joined the board of trustees
10 of the Fund in 2016, have you ever asked for an
11 audit of the services provided by the unions to the
12 Fund?

13 A. No.

14 Q. Do you know if any audit has taken place?

15 A. Not to my knowledge.

16 Q. Let's turn to Interrogatory Response
17 No. 10, which is on pages 12 to 15, if you'd like to
18 take a moment to read through that.

19 A. I'm sorry, which one is it again?

20 Q. It is Interrogatory Response No. 10 --

21 A. No. 10.

22 Q. -- on page 12 and goes through page 15.

23 A. Okay.

24 Q. So --

25 A. Hold on, hold on, I'm not done reading.

Exhibit 6

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 - - -
4

5 KEVIN RISTO, on behalf of : CASE NO. 2:18-cv-
6 himself and all others : 07241-CAS-PLA
7 similarly situated, :

8 Plaintiff, :
9 :

10 vs. :
11 :

12 SCREEN ACTORS GUILD-AMERICAN :
13 FEDERATION OF TELEVISION AND :
14 RADIO ARTISTS, et al.,
15 Defendants.

16 - - -
17

18 PORTIONS CONFIDENTIAL
19 Friday, October 23, 2020

20 - - -
21

22 Remote videotaped stenographic deposition of
23 KRISTINA GORBACSOV, conducted at the location of the
24 witness in Los Angeles, California, commencing at
25 approximately 9:03 a.m., on the above date, before
Rosemary Locklear, a Registered Professional Reporter,
Certified Realtime Reporter and California CSR (#13969).

26 - - -
27

28 GOLKOW LITIGATION SERVICES
29 877.370.3377 ph | 971.591.5672 Fax
30 deps@golkow.com

1 program, the Oracle system, we had to figure out a way
2 that we could enter our session report information into
3 Oracle, which we did. And now we use that, which we
4 can't really search through Oracle. It's very -- it's
5 kind of complicated.

6 I'm sorry for this level of detail. But there's
7 a program that is more of an application that's called
8 ClickView, and ClickView is a representation of
9 everything that's in the Oracle system.

10 So we can use ClickView, which looks -- I guess,
11 when you use ClickView, the best way I can explain it is
12 it looks like an Excel sheet and you're able to search
13 for the titles. But in ClickView, it doesn't link you
14 to specific session reports, so you have to go to the
15 physical files.

16 So the process of getting to this -- you know,
17 to call it a database, it's not a database, because we
18 have to, first of all, enter the information from the
19 session report into this Oracle system. Then it
20 migrates, you know, it updates every so often into
21 what's called a ClickView, which is just a visual way we
22 can capture the information, and we search it, but then
23 we have to physically go to the files, pull them and
24 scan them. And that's just how it's done in Los
25 Angeles.

1 A. No. It's okay.

2 Q. I'm not asking so much about the requests --

3 A. Okay.

4 Q. -- as the information that the requests are
5 seeking.

6 So the session reports and B-Forms, the
7 membership data maintained by IT, do you know when
8 SAG-AFTRA began collecting that information, generally
9 speaking?

10 A. Sure. Well, the member -- I mean, I would say
11 that collections started with just physical files,
12 firstly, and that would be the beginning of, you know,
13 whenever our offices really opened, whenever Sound
14 Recordings started, because we would collect the session
15 reports and would have filed them physically firstly.

16 So that's just from whenever, you know, the
17 actual offices sprang up. So, I mean, our contract
18 dates back to 1951, so we would have physically kept
19 session reports just as physical files.

20 As far as when the ACE program or, you know, our
21 other programs, that would be much later, probably, you
22 know, I think maybe ACE was in the -- I don't know
23 exactly about that one specifically.

24 I do know that the system that I referenced, the
25 ClickView and the entering of Oracle, we did have this

1 Q&A system which started in '93, and it became after --
2 in 2015 we lost Q&A and had -- that's when we figured
3 out a way to enter them in the Oracle system. So --

4 Q. It sounds like this information was being
5 collected prior to the creation of the Fund in the mid
6 to late '90s, then; is that correct?

7 A. The information has been -- with the exception
8 of other offices outside of those main three, L.A.,
9 Nashville, and New York, we have maintained our physical
10 records since these offices have really opened.

11 I say "with the exception" because other
12 locations didn't really keep files for various reasons,
13 perhaps storage or a lack of office or offices closing,
14 or whatnot, so they sometimes destroyed them. So we
15 might have lost some if a session was elsewhere, but
16 those three offices would have kept as much as we could
17 of physical files.

18 Keeping in mind that some have been destroyed
19 only because of maybe climate or how they were stored.
20 We used to have sessions on carbon copy, and that
21 doesn't really last too well over time.

22 So with the exception of those sessions that we
23 don't have physically anymore because they've been --
24 they've deteriorated, then we would have kept our
25 sessions just to have as a bit of a, you know, library

1 just because we would keep them for claims, you know, we
2 just would maintain them. So, yes, they did exist
3 before the Fund, to answer in short.

4 Q. And then in terms of processing this
5 information, is the -- is SAG-AFTRA undertaking tasks
6 with respect to processing, digitizing the data that it
7 would not have done if not for the Services Agreement?

8 MR. SULLIVAN: Objection. Speculation.
9 Incomplete hypothetical.

10 BY MR. LIFSCHITZ:

11 Q. You can answer if you're able to.

12 A. I would say that -- well, we certainly
13 wouldn't -- I mean, the research part of it that we do
14 for the Fund is something that we wouldn't really do
15 otherwise.

16 As far as maintaining the records, I would say
17 that, you know, we have an increased consciousness of
18 the need to be accurate because this is now something
19 that is relied on by another organization.

20 So not that we didn't care in the past, but
21 there certainly is more pressure to be accurate and be
22 more careful in our recordkeeping. So I don't want to
23 say necessarily we would do everything the same way even
24 if we didn't have to supply that information because
25 there are so many other things that we need to do as a

1 department.

2 So we would have to keep our -- we would keep
3 our records, we would physically keep them, but we did
4 make a conscious effort when we realized, hey, we're
5 losing Q&A and we're losing ACE system, but we need a
6 way -- we also, you know, need to figure out how we can
7 keep this information as a more trackable way because we
8 get so many requests from the Fund.

9 So the thinking, I think, was there was more
10 pressure on us to figure out a way to maintain it in a
11 user-friendly way than if we didn't have to supply this
12 information. Yes, we have a need for the information,
13 but when we have so many requests coming from us so
14 frequently, then there's more urgency.

15 So -- and now we're responsible for not just us,
16 but another organization so the focus was, you know,
17 more intense on making sure that we have these records.

18 Q. So the improvements that SAG-AFTRA has made to
19 its document filing system, do they have any benefit to
20 SAG-AFTRA beyond assisting the Fund?

21 Are there other uses of this information by
22 SAG-AFTRA?

23 A. Besides providing the information to the Fund,
24 we do use this information for claims purposes and for
25 what's called conversions.

1 THE WITNESS: Okay. Can you repeat it again?

2 Sorry. I just got --

3 BY MR. LIFSCHITZ:

4 Q. I was asking if you can separate out or estimate
5 the amount of time spent gathering information for
6 SAG-AFTRA generally versus the time spent gathering
7 information solely for the Fund's purposes.

8 A. Sure. So information gathering for the Fund
9 purposes would be -- it depends on the specific person
10 who is performing the function. At this point, we've
11 tried to streamline the process because we were trying
12 to figure out a more time-effective way because it is
13 time-consuming.

14 So we streamlined it to have the requests
15 initially go to Josh Reese in Nashville, and from there,
16 he filters them on to whoever is needed. So his time is
17 spent, at least five hours a week, on the requests that
18 come in to us from the Fund. And that compared to what
19 he's doing with the information for other purposes is --
20 he's not spending -- he doesn't do conversion claims in
21 general, but he does do some research.

22 So, you know, he does do a few hours of research
23 to help our business rep who files conversion claims.
24 But at least five hours of his week is devoted to these
25 requests because he gets maybe 45 to 60 requests a week.

1 So his time is much more than, perhaps, you
2 know, our rep in L.A., her name is Alyssa Clayton. Josh
3 has done the bulk of trying to filter out to see if we
4 have these reports. So Alyssa spends probably an hour
5 per week trying to retrieve the actual physical files
6 and -- after he's done the legwork.

7 So it depends on who -- I would say Alyssa, and
8 Kimberlee in New York, who's -- again, who filters for
9 there too, so their time is -- I mean, Kimberlee
10 probably even less so, because there's not as many
11 sessions in New York, so hers is, you know, maybe like
12 five hours a month.

13 But Alyssa, you know, an hour, 30 minutes to an
14 hour, perhaps, per week, trying to retrieve those for
15 Josh. But Josh is putting more time into it.

16 Q. So we've identified, then, six hours a week,
17 five from Josh, one from Alyssa, that is spent on
18 fielding requests by the Fund.

19 Is the information being collected in the work
20 being done during these six hours a week only of use to
21 the Fund?

22 A. For this part, yes, because they're not
23 researching for conversions. Because, you know, with
24 conversions, we don't know which songs -- like, this is
25 dependent on the reports that we get from the record

1 labels. So these are not the same songs that we're
2 researching for the Fund versus what we're researching
3 for conversions. So that's a different thing.

4 It would be lovely to have them use the same
5 songs, then we could do both at once, but that's just
6 not how it works. So we may have, you know -- you know,
7 like I said, 45 to 60 report -- requests from the Fund,
8 but those are not titles that we are going to be able to
9 use for conversion purposes.

10 So it's not like we can, you know, multitask on
11 that. We have to do those separately. And conversions
12 are handled -- those are different songs and they're
13 researched potentially differently, so -- based on
14 Internet and other things that we use to handle those.
15 So it's not the same. Like, they don't overlap with the
16 time. They're different.

17 Q. Got it.

18 So if the Services Agreement did not exist and
19 SAG-AFTRA had no obligation to provide information to
20 the Fund, these six hours a week of work would not
21 occur?

22 MR. SULLIVAN: Objection. Incomplete
23 hypothetical. Calls for speculation.

24 BY MR. LIFSCHITZ:

25 Q. You can answer, if you can.

1 A. If we did not have to provide this information,
2 then we would be able to use those hours on something
3 else. So, yeah, we would not have to spend six hours a
4 week.

5 Q. So, aside from the two people you just
6 identified, Josh and Alyssa, are there any other
7 employees at SAG-AFTRA who are undertaking this work on
8 behalf of the Fund?

9 A. Yes. In addition to Alyssa and Josh, it's
10 Kimberlee Archie in New York.

11 Q. And how many hours a week would you estimate
12 that she spends purely on Fund business?

13 A. Kimberlee is less frequent than Josh and Alyssa,
14 so I would say she's spending only two to three hours a
15 month, probably. There's just not as many sessions in
16 New York.

17 Q. Got it.

18 So, other than these three people, is there
19 anyone else who is fielding the Fund's requests?

20 A. Not at this time, no.

21 Q. And, historically, has that been the case, as a
22 general -- you've been at SAG-AFTRA that these three --

23 A. In my -- my understanding is that these requests
24 started early 2000s and they went to Josh and Kimberlee
25 in Nashville and New York, respectively, and I am not

1 about the Services Agreement this whole time. And we've
2 already touched on what's contemplated by the second
3 bullet point, but can you read it out loud for the
4 record?

5 MR. SULLIVAN: Dan, before we go on, for both
6 Numbers 2 and 3, Kristina has been prepared to provide
7 30(b)(6) testimony about the provision of data. With
8 respect to advocacy, and also Point 3, the mandates, she
9 hasn't been prepared to provide 30(b)(6) testimony on
10 these topics.

11 Apologies to the extent there was any confusion
12 there, but our 30(b)(6) -- SAG-AFTRA's 30(b)(6)
13 designee, Duncan Crabtree-Ireland, can offer -- can
14 offer responses with respect to Topic Number 7 for
15 Bullets 2 and 3 here, and Kristina can respond to your
16 questions to the extent she has personal knowledge.

17 MR. LIFSCHITZ: Understood.

18 BY MR. LIFSCHITZ:

19 Q. So, again, can you read the second bullet point
20 out loud for the record.

21 A. Yes, I can.

22 "Access to session reports and 'B-forms,' or
23 databases containing information derived therefrom, that
24 in either case, identify the recordings made at
25 recording sessions and provide identifying and contact

1 information for performers (Union members and
2 nonmembers) who performed at the session."

3 Q. So to begin, can you generally describe what
4 session reports and B-Forms are and if there's any
5 distinction meaningful between them?

6 A. Sure. So for me -- I mean, for Sound
7 Recordings, it's session reports. I think B-Forms is
8 really AFM, what AFM calls their reports. So I'm just
9 going to call them session reports because I think
10 that's most accurate.

11 And session reports are forms that contain -- I
12 can list the information for you. It would include
13 information such as the record label, the producer, the
14 song title, possibly the album title, the length of the
15 track, the list of performers, singers, who are members
16 and non-members, the featured artist.

17 The performer information would include the
18 Social Security number, as well as the address, and it
19 would include the number of overdubs or multi-tracks
20 that the performer performed during the session. It
21 would include the start time and the end time.

22 And, basically, it would -- it's a bit of a
23 snapshot of the work that was done during that session,
24 and it would be used to have the -- you know, make sure
25 that we have the correct performers identified on that

1 session. And that's what we use in order to get them
2 paid for claims purposes and that is what we supply to
3 the Fund.

4 Q. And, as you just indicated, these are used by
5 SAG-AFTRA for claim purposes.

6 So is it fair to say SAG-AFTRA has multiple uses
7 and needs for this information?

8 A. It is fair to say that we have multiple uses for
9 this information, yes.

10 Q. Can you separate out or estimate the time spent
11 gathering this information for SAG-AFTRA's general
12 purposes versus the time spent gathering and providing
13 it specifically to the Fund?

14 MR. SULLIVAN: Objection. Vague and ambiguous.
15 Calls for speculation.

16 THE WITNESS: I would be really speculating,
17 because, again, it's sort of -- it's a little bit hard
18 to guess only because the -- again, the people involved
19 do different pieces of this time-wise.

20 So Josh, for example, as I mentioned, he's
21 spending about, you know, at least five hours a week,
22 let's say, on just supplying the session reports to the
23 Fund, which is different than him helping -- you know,
24 him filing claims for initial compensation.

25 So then I would say that, just for Josh

1 specifically, we're saying five hours a week on the Fund
2 requests and, perhaps -- I mean, again, I'm really
3 speculating -- possibly -- I'm just thinking it through
4 from when I was filing claims -- could spend six hours
5 on filing claims using the session reports or that could
6 be helping people fill it out. It varies, too, week to
7 week.

8 I mean, it's pretty consistent that we're going
9 to be spending -- he's going to be spending five hours a
10 week on AFM/SAG-AFTRA Fund requests, but it kind of
11 waxes and wanes when we're talking about using the
12 session report for our purposes, because sometimes
13 there's a lot of sessions happening and sometimes
14 there's really not.

15 So it really fluctuates and there's not a whole
16 lot of consistency, but -- so I guess my point is that
17 it could be three to eight hours a week on claims for
18 sessions.

19 MR. LIFSCHITZ: Sure.

20 BY MR. LIFSCHITZ:

21 Q. So to suss that out a little bit, can a
22 distinction be made between the work and time involved
23 collecting the session reports, in the first instance,
24 versus then providing information from the reports
25 requested by the Fund?

1 A. It could. Again, I'd be speculating. I think
2 that when it comes to time spent on -- with the session
3 reports for initial compensation, that also involves
4 sometimes educating the members on how to complete it,
5 and also communications with record labels on trying to
6 follow up on those claims that are filed and actually
7 filing the claims.

8 So I guess, if I tried to do it percentage-wise,
9 maybe, you know, he's spending 50 percent of his time on
10 claims, the -- that have to do with, you know, our
11 SAG-AFTRA claims for initial comp, 40 -- you know, maybe
12 40, 50 percent. And then if I said five hours a week,
13 that's like a 20 percent for the Fund requests.

14 And the rest of the time he's dealing with other
15 SAG-AFTRA work that he's doing, which is -- could be
16 research for other things. So, I mean, again, I'm
17 really speculating. I haven't -- I don't have an exact
18 number.

19 Q. Got it.

20 But -- so your estimation is that out of the
21 five hours a week that he is working on providing
22 session report information, about one hour a week
23 estimated to be for the Fund and the remainder on other
24 SAG-AFTRA activities like claims?

25 A. No. The five hours a week is just time he's

1 spending on responding to --

2 MR. SULLIVAN: Objection. Misstates --

3 THE WITNESS: Sorry.

4 MR. SULLIVAN: Objection. Misstates the
5 witness's testimony.

6 BY MR. LIFSCHITZ:

7 Q. So please correct me.

8 A. So the correction is that the five hours a week
9 for Josh is just really on responding to the
10 AFM/SAG-AFTRA requests exclusively and the research done
11 on those.

12 The rest of the time he's dividing his time
13 between claims for initial compensation for the
14 sessions, researching for us for other claims purposes,
15 which would be those conversions. So that would be the
16 majority of his time, for sure.

17 I'm not sure what the percentage would be
18 because we do have other things that we do with a
19 limited number of people, so -- but I'm pretty clear
20 that that's still -- it's about five hours a week, and
21 it's just on requests at this point.

22 Q. Okay. So the process and work that Josh is
23 doing, then, when he is spending these five hours a
24 week, is that accessing existing session reports
25 maintained by SAG-AFTRA and then providing responsive

1 information to the Fund or are there instances where the
2 Fund requests information from Josh that SAG-AFTRA
3 doesn't currently possess, a session report it hasn't
4 yet acquired, and Josh has to then undertake that work
5 of acquiring the report in the first instance?

6 A. The work that he's doing is mostly supplying
7 information that we have. So he's not going to do
8 extensive -- he's not doing research for them outside of
9 what we have at the union.

10 Though, I do want to just say that sometimes
11 there's a little bit of follow-up where they might have
12 access -- they have might have possession of a form that
13 we might have supplied in the past, and then maybe they
14 have to contact us as a follow-up to clarify like Social
15 Security numbers or to get something because the scan
16 that they received isn't quite clear.

17 So there is some follow-up work sometimes, but,
18 for the most part, he is still -- he's looking for the
19 information that we have collectively at the union.
20 It's not where he's doing outside research to come up
21 with it. It's something that, hopefully, we are
22 possessing and that we are able to provide them.

23 Q. Could you provide an estimate for the amount of
24 time that Josh spends on a weekly basis doing that
25 follow-up to the extent it's broken out from the five

1 hours a week or is that part of the five hours a week?

2 A. Oh, I would -- I mean, I think the requests he
3 gets are -- it's like 45 to 60 a week. So that time
4 that's spent -- that five hours is for those.

5 Anything additional probably is extra time. I
6 don't think those -- those don't come super-often. So
7 this is not on a daily basis. It's just maybe, you
8 know, once a -- every couple weeks, maybe, there will be
9 a follow-up on specific things because the scans weren't
10 that hard -- they were hard to read or maybe they're
11 looking at something quite, like I said, older, so they
12 might ask him, but they're more one-off situations.

13 I don't know -- I don't think it's a whole lot
14 of extra time, but that would be additional time in
15 addition to those five hours I'm talking about.

16 Q. Okay. And who is generally responsible for
17 collecting these documents at the national level?

18 A. Initially, these documents are sent to -- it
19 depends where the work is happening really. So,
20 primarily, the session work is happening in New York,
21 Los Angeles, and Nashville.

22 So the sessions are being completed -- we have
23 different ways we receive this information, but the
24 reports are sent to us by the performers themselves
25 directly after they've completed the session report.

1 MR. LIFSCHITZ: Yeah.

2 BY MR. LIFSCHITZ:

3 Q. So the Fund has a certain number of recordings
4 it needs to identify the performers to pay on.

5 A. Uh-huh.

6 Q. And it seeks that information from SAG-AFTRA.
7 SAG-AFTRA has multiple sources of information that it
8 can turn to, between the session reports, membership
9 information, and good, old-fashioned sleuthing, as
10 you've indicated.

11 Do you have any sense of how many requests for
12 information SAG-AFTRA fields where there are responsive
13 session reports versus recordings that no session report
14 was ever either generated for or ever remitted to
15 SAG-AFTRA for?

16 A. Okay. I think to answer that, I best reference
17 a conversation that I had with Julie Sandell and Lisa
18 Finnie at the Fund specifically in my research in
19 preparation for this.

20 So one thing -- things that I learned from them,
21 because we've never -- you know, like SAG-AFTRA, we
22 didn't have a -- we did not have a way we were actually
23 tracking this information. So they actually have their
24 own internal tracking system, but I learned that there's
25 also some flaws with that. So this is, again, going to

1 be an estimate to get to the answer.

2 And what they did is try to -- they only looked
3 at the years between 2014 and 2020, so they were able to
4 tell me the number of requests they made during that
5 period of time.

6 And I should say that this only is for the New
7 York, Nashville, Los Angeles, and Miami office. So this
8 only reflects those offices, which are probably the four
9 largest, and it's only for that time period.

10 And the number is also -- you know, it's not
11 going to be exact. It's probably underreported, because
12 it's really reliant on the researchers doing this
13 accurately. And the way she explained the system, they
14 had to, you know, check certain boxes, just -- it allows
15 for some human error, so this isn't going to be
16 super-accurate.

17 But the number they gave me was that they --
18 they sent us 13,777 requests, and that is during that
19 time span. And my -- again, I want to emphasize -- put
20 emphasis on the fact that that this is underreported.
21 This is just the floor. So this is at least that much,
22 and we have returned 27 percent of those requests with
23 actual session reports.

24 So out of the 13,000 that I'm mentioning, we
25 responded to 27 percent of those and actually had the

Exhibit 7

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 KEVIN RISTO, on behalf of)
himself and all others)
4 similarly situated,)
)
5 Plaintiff(s),)
)
6 vs.) Case No.:
) 2:18-cv-07241-CAS-PLA
7 SCREEN ACTORS GUILD-AMERICAN)
FEDERATION OF TELEVISION AND)
8 RADIO ARTISTS, a Delaware)
corporation; AMERICAN)
9 FEDERATION OF MUSICIANS OF THE)
UNITED STATES AND CANADA, a)
10 California nonprofit)
corporation; et al.,)
11)
Defendants.)
12 _____)
13
14

15 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
16 VIDEOTAPED DEPOSITION OF
17 RAYMOND HAIR
18 Appearing Remotely From
19 Denton, Texas
20 Wednesday, February 24, 2021
21
22
23

24 Stenographically reported by:
EMILY SAMELSON, CSR No. 14043
25 Golkow Job No.: 269544

1 management and other documents that would be
2 presented to the board of trustees for review and
3 approval.

4 Q Okay. When you were appointed to the Fund,
5 I asked you if you were given any training with
6 regard to what your roles were as a Fund trustee.
7 And I'm going to change that a little bit to say you
8 talked about lots of discussions, and I don't mean
9 to have it like a formal training.

10 So did you have discussions with what it
11 meant to be a trustee of the Fund? That's a
12 yes-or-no question.

13 A In part.

14 Q Okay. And my next question is going to be
15 with whom did you have discussions with about your
16 role as a trustee to the Fund?

17 A Well, I had lots of in-depth discussions
18 with AFM attorneys who were involved in the -- the
19 entire process starting in 1994 in the lobbying and
20 the agreements with the RAA and eventually the
21 passage of the Digital Audio Recording Act, which
22 led to the creation of 114(g) or the -- it led to
23 the actual laws.

24 And then I also had discussions with our
25 attorneys about what was going on with the AFM

1 SAG-AFTRA Fund. I also had discussions with Dennis
2 Dreith about the Fund.

3 Actually, when I first -- my first visit to
4 the Film Secondary Markets Fund in -- it must have
5 been in later 2010. I don't know exactly when that
6 would be, but that's when Dennis -- I took a tour
7 of the Film Secondary Markets Fund offices and found
8 the AFM SAG-AFTRA Fund residing in the break room of
9 the Film Secondary Markets Fund. So we had
10 discussions about that.

11 And I also had some discussions with Kim
12 Roberts Hedgpeth, who was the executive director. I
13 believe it's -- I believe it's called the National
14 Executive Director of AFTRA about the Fund.

15 Q And without you telling me the substance of
16 any communication, what AFM attorneys did you meet
17 with to discuss the Fund?

18 MR. THOMAS: Objection. Vague.

19 THE WITNESS: Without -- without comment on
20 the substance of the discussions I had with our
21 attorneys, the attorneys were Jeff Freund and
22 Patricia Polach.

23 BY MR. KIESEL:

24 Q And could you spell Jeff's last name?

25 A F-R-E-U-N-D.

1 belief is as to what those duties are, and that's
2 what you've described to us already; correct?

3 A I just have to stand on what I've said.

4 Q Fine.

5 And you used the word "maximize
6 collections"; correct?

7 A Yes.

8 Q And you would stand by the duty of care as
9 is to maximize collections for Fund participants;
10 correct?

11 A We want --

12 MR. THOMAS: Object to the form. Vague.

13 THE WITNESS: I'm sorry. Andrew, did I --
14 I stepped on you there.

15 MR. THOMAS: I said, "objection to form.
16 Vague."

17 But you can answer the question.

18 THE WITNESS: We want to -- we want to push
19 the principle, as our union has in every way, the
20 principle of no collection without distribution.
21 And I refer to that as a principle that we have
22 continually used in our -- in our international
23 advocacy to get the foreign collectives to pay what
24 they owe. So that's an example of trying to
25 maximize the royalties.

1 Q If I were to ask you to sort of describe
2 the day-to-day work of the Fund, has the day-to-day
3 work of the Fund changed today versus how it was
4 when you first started with the Fund in 2012?

5 MR. THOMAS: Objection. Lacks foundation.
6 You can answer.

7 THE WITNESS: Well, I first started with
8 the Fund in 2010.

9 BY MR. KIESEL:

10 Q I apologize. 2010. I was thinking when
11 they -- so let's go back.

12 2010, when you started with the Fund, have
13 the day-to-day activities of the Fund changed over
14 the last 11 years?

15 A I think I would answer that question this
16 way. I think the Fund functions have been pretty
17 much the same. I think it's broadened out with the
18 audiovisual portions and then also the symphonic
19 side of it. There's a lot more to do because
20 there's a lot more consumption worldwide in
21 streaming.

22 But I think the basic functions -- I mean,
23 if you were -- if you were going to just look at
24 what the Fund is supposed to do when you've got --
25 you know, you've got -- you've got royalties coming

1 in from Pandora and Sirius XM and other sources,
2 foreign sources, and, you know, you've got AV
3 royalties coming in and you've got, you know, all of
4 the sources, you know, the functions of what has to
5 be done, I believe, are pretty much the same.
6 There's just -- there's just a lot more of it to do.

7 Q Understood.

8 So the number of sources of revenue have
9 expanded coming into the Fund, but the basic
10 operation of the Fund has not changed itself?

11 MR. THOMAS: Object to the form. Misstates
12 his testimony.

13 THE WITNESS: I don't want to say the
14 operations of the Fund because I think the
15 operations of the Fund, they have varied. But I
16 think the basic, fundamental, you know, goal of the
17 Fund, to collect the royalties and distribute them,
18 I think that's the same.

19 You know, if you mean which -- which part
20 of that operation is allocated to this person or
21 that person or this department or that department
22 or, you know, a symphonic department or an AV
23 department or another department, you know, I'm
24 sure that -- I'm sure those things have changed.

25 ///

1 the idea?

2 A It could have been.

3 Q Okay.

4 A It's possible.

5 Q Understood.

6 Do you recall any discussions that occurred
7 within the AFM before December 27, 2012, the date of
8 Exhibit Number 2, with regard to a service fee
9 agreement with the Fund to AFM?

10 A I do not recall specific discussions.

11 Q Do you have any generalized sense of
12 discussions you may have had, if not specific
13 discussions just a general discussion you may have
14 had, before the request was made to Patricia Polach
15 to prepare an agreement?

16 MR. THOMAS: Object to the form and vague.

17 THE WITNESS: So you're saying general
18 discussions. I think there were general discussions
19 between the -- me and the officers of the union with
20 counsel about the idea of a service fee.

21 BY MR. KIESEL:

22 Q And when you say you and officers of the
23 union, are you referring to officers of the AFM
24 union or SAG-AFTRA or both?

25 A It would be AFM.

1 Q Got it.

2 And with regard to the officers that you
3 may have discussed with them and counsel about a
4 service fee, who would those officers have been?

5 A One would have been Sam Folio.

6 Q And is there another one?

7 A Specifically, Sam Folio might have been
8 more likely to have had conversations with me and
9 with counsel about it.

10 Q And when you say "counsel," who are you
11 referring to when you say "counsel"?

12 A Well that would have been Jeff Freund and
13 Trish Polach.

14 Q And when you say that there were general
15 discussions between you, Sam Folio, Jeff Freund, and
16 Patricia Polach about the idea of a service fee,
17 what did those general discussions consist of?

18 A Generally --

19 MR. THOMAS: To the extent -- I would
20 like the caution the witness, to the extent -- he
21 could -- he can probably answer the question about
22 general discussions, but I would caution him not to
23 reveal the substance of any legal advice that he may
24 have obtained in the course of those discussions
25 from any counsel.

1 THE WITNESS: All right. So the AFM had
2 been doing many, many things from 1994, you know,
3 up to the date of those discussions, the general
4 discussions that may have been had. But it would
5 have taken the form of the fact that the AFM is
6 subsidizing the Fund, you know, with the provision
7 of services and the -- the provision of information
8 that -- and the Fund was dependent on that. And,
9 you know -- you know, how can we figure a way to --
10 to be -- to be reimbursed or to be -- to receive the
11 value of what we provide.

12 So, I mean, that's just a general
13 discussion, I suppose.

14 BY MR. KIESEL:

15 Q I understand.

16 So the idea was, look, the AFM is
17 subsidizing the Fund. We're providing information
18 to the Fund that they're using, and there ought to
19 be some reimbursement to the AFM for what we're
20 providing to the Fund.

21 Is that the general idea?

22 A I think -- I think there's more to it than
23 that. Because the AFM was engaging in services that
24 supported the Fund and the creation of it all the
25 way up through the lobbying efforts that we were

1 taking, you know, to 2010. And there was a lot
2 of -- there was quite a bit of resources being used
3 from AFM to have the Fund carry on and move forward.
4 So --

5 Q So when you say there were quite a bit of
6 services provided to the Fund, one would be the
7 lobbying efforts that were happening that -- was
8 that -- those the lobbying efforts that created the
9 Fund?

10 A Not only created the Fund but that were
11 attempting to broaden the copyright laws that
12 established the digital remuneration that was
13 paid to the Fund.

14 You know, I mean, since -- particularly in
15 2010, there was a performance rights bill on deck
16 that was sponsored by -- oh, from Detroit, John
17 Conyers. And the AFM was heavily involved in the
18 lobbying efforts for that.

19 Matter of fact, John Conyers came to the
20 convention in 2010, AFM convention where I was
21 elected, to talk to the convention about the efforts
22 to broaden the copyright law to include a
23 terrestrial right.

24 And then my -- in my education from counsel
25 and others about those laws, it was determined that

1 if the -- if the terrestrial rights in the U.S. were
2 adopted, then that would unlock many millions of
3 dollars in Europe, you know, on a reciprocal basis
4 to flow through Sound Exchange and AFM SAG-AFTRA
5 Fund to then be able to distribute more -- collect
6 more royalties and distribute them.

7 So there was a lot of stuff going on and
8 there was a lot of, you know, sweat equity. There
9 was a lot of -- a lot of attention and a lot of
10 activity being -- being used or being expended,
11 you know, by the AFM to the benefit of the Fund.

12 Q So you felt that the lobbying activities
13 that AFM was involved in that ultimately led to
14 unlocking funds that were then deposited with the
15 Fund to be distributed to beneficiaries, that the
16 AFM should be reimbursed for the costs associated
17 with their activities?

18 A See, you're trying to -- you're trying to
19 make it seem like I want to be reimbursed for the
20 costs. But, you know, it's really the value of what
21 we provide, and the value of what we provide comes
22 in a lot of different ways. It comes in the data.
23 It comes in the maintenance of that data. It comes
24 in the maintenance of the performers' addresses and
25 personal information.

1 By the way, I want to go back to 1956. I
2 want to go back to Elvis Presley. The people who
3 are still alive today who performed on the Elvis
4 Presley song we were talking about, "Hound Dog,"
5 they don't live in the same place that they lived
6 in in 1956. They've been -- they probably have
7 lived several different places.

8 And so the union maintains not only the
9 addresses and the contact information for the union
10 members and also the nonunion participants, but we
11 engage in a lot of activity that, besides the
12 negotiating with the record companies to formulate
13 the B-forms that are then transmitted to the Fund,
14 but we also go all out, all out, to expand the scope
15 of the laws that exist that create the money, that
16 cause the money to be paid over in the first place.

17 Q So, Mr. Hair -- and I appreciate you
18 recognize that I'm talking "cost."

19 And you're talking "value," what's the
20 value to the Fund for the work that the AFM in
21 particular is doing; correct?

22 A I'm talking about the value.

23 Q Right.

24 Was there an attempt that you're aware of
25 to quantify the value of the services provided by

1 appropriate for the Fund to pay a fee to the unions
2 for the data and services it was providing to the
3 Fund?

4 A Not specifically that I can recall.

5 Q Do you recall whether Dennis ever made that
6 inquiry of Ms. Polach when you were present?

7 A I don't know what Dennis did.

8 Q When you were present, I was saying.
9 Obviously, I'm not asking you to state what Dennis
10 did.

11 But when you were -- when you were present
12 with Ms. Polach, do you ever recall a conversation
13 that someone, whether it was you or Dennis or
14 someone else, asked Ms. Polach whether such a fee
15 was appropriate?

16 MR. THOMAS: Object to the form. Vague.

17 But you can answer it.

18 THE WITNESS: I don't recall.

19 BY MR. KIESEL:

20 Q Did you ever make a request of Ms. Polach
21 whether it was appropriate for AFM to make the
22 request to the union?

23 A I can't recall.

24 Q Do you know, Mr. Hair, how it was the
25 3 percent number was arrived at? There's been

1 testimony sort of across the board of highs and
2 lows, and I'm wondering if you can shed some light
3 on that for us.

4 A I think --

5 MR. THOMAS: Object to the form.

6 But you can answer.

7 THE WITNESS: Here's the best I can do with
8 that, because I've been trying to think about it and
9 try to remember.

10 But back in 2012, you know, when we were --
11 we were beginning to discuss the idea of a service
12 fee arrangement, I remember Dennis Dreith and I
13 having a conversation where we thought that
14 a 2 percent number for each union would be
15 appropriate.

16 As a matter of fact, we -- you know, it was
17 just an informal conversation in his office at the
18 Fund. And we thought that 2 percent per union was a
19 reasonable place to be with that.

20 BY MR. KIESEL:

21 Q Do you recall how it was the 2 percent
22 number was arrived at?

23 A I can't recall exactly why that number,
24 you know, emerged, but it seemed like a reasonable
25 number. And, you know, so that would have been

1 under the scenario that we're -- that we have now,
2 that would have been 4 percent.

3 Q Right. I was going to say, that would have
4 been a 4 percent number based upon --

5 A Right.

6 Q -- now it's 1 1/2 to 1 1/2. It would have
7 been 2 and 2 to 4?

8 A Yes. But, you know, we just -- we just
9 sort of kept talking about it together. And like I
10 said, I can't remember any specific conversation
11 about it with the group, but it was sort of a group
12 thing where we sort of talked it to 3 percent.

13 But, you know, there was a time when
14 Dennis and I were in his office and we thought that
15 2 percent to AFM and 2 percent to SAG-AFTRA was the
16 right -- the right place to be.

17 Q And is it fair to say that when these
18 discussions were happening in 2012, the amount of
19 funds recovered by the Fund in 2012 were
20 substantially less than they were, by example,
21 in 2018?

22 MR. THOMAS: Object to the form. Vague.

23 But you can answer.

24 THE WITNESS: There was less -- there was
25 less money being collected and distributed in 2012

1 BY MR. KIESEL:

2 Q To your knowledge, up until the present
3 time, has there ever been a time that there's been a
4 discussion of doing audits to actually place a value
5 on the services provided by the union to the Fund?

6 A No.

7 MR. THOMAS: Object to the form. Vague as
8 to "audit."

9 THE WITNESS: The answer is no.

10 BY MR. KIESEL:

11 Q You said a brief while ago that the service
12 fee was in part to reimburse the AFM because the AFM
13 was subsidizing the Fund.

14 Do you recall that?

15 A Yes.

16 Q And by "subsidizing the Fund" -- and I then
17 said what do you mean by "subsidizing"?

18 You talked about the lobbying activities
19 that were being done by the union. You talked about
20 the data that was being provided to the Fund from
21 the union.

22 Anything else other than the lobbying
23 activities and the data that was being provided
24 would make up the AFM subsidizing the Fund?

25 MR. THOMAS: Object to the form. Overbroad

1 and vague.

2 THE WITNESS: There were lots and lots
3 and lots of services provided in domestic and
4 international advocacy. The AFM also negotiates the
5 deals with the record labels. And, you know, to the
6 extent that the AFM continues to bargain with the
7 record companies and continues to improve its
8 agreements with the record companies that also
9 include the maintenance of data and establishment of
10 the forms, plus the data itself, you know, there's a
11 lot of things that go into all that.

12 BY MR. KIESEL:

13 Q In 2012, how many members of the AFM were
14 there?

15 A 2012. 75-, 80,000.

16 Q And these union members are dues-paying
17 members? Should be dues-paying members?

18 A Yes. Yes. Union members pay dues.

19 Q And is it fair to say that the dues that
20 the union members pay, in part, covers the cost of
21 domestic and international advocacy that the union
22 is performing on their behalf?

23 A The dues that union members pay go to the
24 union to fund the totality of what the union does.

25 Q Which includes domestic and international

1 advocacy?

2 A It includes that.

3 Q It includes the creation of databases that
4 identify union members, so when the time comes for
5 the union members to get paid, you know who are
6 members that are subject to being paid funds that
7 are due them?

8 A Union members and also nonunion musicians.

9 Q In fact, the nonunion musicians aren't
10 paying in at all to the work being done by the union
11 in distributing funds to them; right?

12 MR. THOMAS: Object to the form. Vague.
13 Lacks foundation.

14 THE WITNESS: Yes. They're not paying.
15 And that's another reason that we thought the AFM
16 ought to receive the value of what we provide to the
17 AFM and SAG-AFTRA Fund.

18 BY MR. KIESEL:

19 Q It's a way to basically have the nonunion
20 musicians pay for some of the costs associated with
21 getting them the money they're taking from the Fund;
22 right?

23 MR. THOMAS: Objection. Misstates the
24 testimony. Vague.

25 THE WITNESS: I don't know. I think

1 you're -- I think you're confusing me, what you
2 just said.

3 BY MR. KIESEL:

4 Q Sorry. Don't me mean to confuse you.

5 What I thought I heard you say is the
6 nonunion members are doing nothing to subsidize the
7 AFM for providing data that assists the Fund in
8 getting them paid their royalties?

9 MR. THOMAS: Object to the form. Vague.

10 THE WITNESS: The data is one part, but
11 services are another. It's all -- it's all wadded
12 up.

13 BY MR. KIESEL:

14 Q I'm going to have you flip your blinds up
15 just a wee bit, because the sun is facing west now
16 and it's blinding.

17 A Okay.

18 Q Maybe turn the blinds the other direction,
19 and that way the --

20 A Let me make sure I know which one you're
21 talking about.

22 Q It's in the upper right-hand corner, upper
23 left-hand corner. It's the one behind you.

24 A It's getting in your eye.

25 Q It is getting in my eye.

1 A How is that?

2 Q That's better.

3 A Is that better?

4 MR. KIESEL: Camera? How is it for the
5 camera?

6 THE VIDEOGRAPHER: It looks fine.

7 MR. KIESEL: Okay. Perfect. Thank you.

8 BY MR. KIESEL:

9 Q If I were to ask you what was the AFM
10 trying to recover, in part, with regard to the
11 1.5 percent service fee that it was collecting from
12 the Fund, you've talked about the data. You talked
13 about the domestic and international advocacy. You
14 talked about negotiating the deals with the labels.
15 Anything else you can think of that is
16 intended to reimburse the union for what it's
17 providing to the Fund?

18 MR. THOMAS: Object to the form. Overbroad
19 and vague.

20 THE WITNESS: You know, the "reimbursed"
21 word, I think, is better turned into a word that
22 says the AFM should receive the value that it
23 provides to the AFM and SAG-AFTRA Fund, not only
24 today, not only the day that it became effective,
25 service fee agreement, but every day in the future.

1 Because every time data is provided and
2 services are provided, that work continues to -- the
3 work and the data and the ongoing provision of data
4 continues to serve the Fund every day forward. So,
5 you know, it's a value provided that continues to be
6 served because the consumption of the music and the
7 content that is created continues to drive the --
8 continues to drive the payment of royalties.

9 It's not just -- it's not just a one-shot
10 deal, you know, where a B-form goes into a file and
11 then, you know, that's it. You know, it's not like,
12 you know, we're a can of soup at the grocery store
13 that gets consumed and that's it.

14 It's not like, you know -- you know, you
15 call a plumbing and the plumber fixes the toilet,
16 you know, and, you know, you don't have to pay the
17 plumber every time you flush the toilet. You know,
18 this is about the provision of services and also
19 data that continues to provide value to the Fund
20 every day forward.

21 BY MR. KIESEL:

22 Q So when you say "value to the Fund," my
23 question to you, Mr. Dreith, is -- "Mr. Dreith" --
24 Mr. Hair, who sets what the value is to the unions?

25 Who sets that figure, what the value is to

1 really think that that may have been the wrong word
2 for me to use, because I think the AFM should be
3 entitled to receive the value of what it provides.

4 BY MR. KIESEL:

5 Q So if I just use your words, "the value of
6 what it provides" -- let's take that phrase, "the
7 value of what it provides" -- it's your view that
8 the Fund should give back to the union the value of
9 what the union is providing to the Fund; right?

10 MR. THOMAS: Object to the form. Vague.
11 Argumentative.

12 THE WITNESS: I think the Fund would not be
13 able to operate if it did not have the support and
14 the service and everything the AFM is providing to
15 it. And I think that the AFM deserves to and should
16 and is receiving the value of what we provide.

17 BY MR. KIESEL:

18 Q You said the Fund would not be able to
19 operate if it did not get provided the value of what
20 the AFM provides to it; correct?

21 A I'm going to say this again. The Fund is
22 dependent upon the AFM for a lot of things. It's
23 dependent upon the AFM to -- for the -- obviously,
24 for the data. And the data consists of two things.
25 It's the session reports. And it's not

1 just the session reports, but it's also the paper
2 trail on what happened at a session that's
3 memorialized sometimes in writing by a company or by
4 a producer, you know, in a different form than just
5 a B-form.

6 And then it also -- you know, the Fund is
7 also dependent upon the unions for the provision of
8 data in the form of contact information for those
9 who perform, who performed on -- you know,
10 originally.

11 Without -- without the union's provision
12 of that, the Fund would not be able to operate the
13 way -- to its -- up to its potential.

14 You know, on the advocacy efforts, domestic
15 and internationally, the Fund would not be here
16 without the AFM and AFTRA in the beginning pushing
17 this, negotiating with the record labels. It's our
18 relationships with the record labels that got us
19 here to begin with.

20 And, you know, and I'm not saying that, you
21 know, what we receive now is indicative of -- did I
22 use that word right, "indicative"?

23 It's not indicative of, you know, every --
24 you know, every effort that we've provided from 1908
25 until 2013. But I do -- I do think that the Fund

1 MS. MCCONNELL: '13.

2 MR. KIESEL: Oh, thank you.

3 BY MR. KIESEL:

4 Q To the extent you made a --

5 MR. KIESEL: Thank you, Mariana.

6 BY MR. KIESEL:

7 Q -- that you made a decision in 2013 to
8 have the service fee be 3 percent of what the Fund
9 received in 2013, that was a whole lot less than
10 what 3 percent was of the money paid in 2018 because
11 of the increased royalties paid into the Fund over
12 those five years; correct?

13 MR. THOMAS: Objection. Lacks foundation.
14 Misstates facts in the record.

15 You can answer.

16 THE WITNESS: Mr. Kiesel, you are doing
17 arithmetic. And I would say you're doing a good job
18 at arithmetic, but you're not doing a very good job
19 at value. And the value of what we do continues to
20 grow every year. As --

21 BY MR. KIESEL:

22 Q Stop right there.

23 A As worldwide consumption increases, our
24 data and our services continue to be used, you
25 know -- you know, all along the way.

1 Q So when you say "our data and our services"
2 are being used, you are clearly wearing your hat as
3 the president of the international AFM; correct?

4 MR. THOMAS: Objection. Argumentative.

5 THE WITNESS: I'm not wearing hats. I'm
6 describing the AFM's role in doing what it does to
7 bargain with the record labels to create not only
8 the data provided but also the services that we
9 provide AFM and SAG-AFTRA Fund with regard to
10 domestic and international advocacy and in every
11 other way that we do. All of that, the value
12 continues to increase every year.

13 BY MR. KIESEL:

14 Q I'm going to restate the question.

15 When you say "our data and our services"
16 are being used, you're referring to the AFM when you
17 use the word "our"; correct?

18 MR. THOMAS: Objection. Asked and
19 answered.

20 THE WITNESS: Yes.

21 BY MR. KIESEL:

22 Q Would you agree with the idea that, as the
23 co-chair of the Fund, you have a responsibility, a
24 fiduciary obligation to return as much money to the
25 beneficiaries of the Fund as possible?

1 the trustees on June 2013 where the service fee came
2 up for a vote.

3 (Exhibit 3 was marked for identification.)

4 BY MR. KIESEL:

5 Q And have you -- I want to give you a second
6 to read through. These are the minutes of the
7 meeting from June 4, 2013, approved on December --
8 December 12, 2013. So take a second, and let me
9 know when you need to scroll up.

10 Are you ready for it to lift up on the
11 screen?

12 A I'm looking at it.

13 Q Great. No, no. I can scroll up. I just
14 want you to see more of the document.

15 A Oh, yeah. Go ahead. Yeah, go ahead.

16 MR. KIESEL: Pull it up.

17 BY MR. KIESEL:

18 Q This is the line that I'm going to get to,
19 which is the administrative fee issue. And let me
20 know when you've had a chance to review it.

21 A Okay.

22 Q All right. Let's go back to the top of
23 this.

24 Okay. So does this appear to be, to you,
25 a copy of the minutes of the June 4, 2013, board

1 meeting that was held?

2 A It appears so.

3 Q Okay. And it would indicate that the
4 trustees that were present there physically was
5 Bruce Bouton; Duncan Crabtree-Ireland on the
6 telephone; Sam Folio; yourself, and you're
7 highlighted; Jon Joyce, who has been crossed
8 out there; and then Stefanie Taub.

9 Do you recall that you chaired this
10 meeting, or did Mr. Crabtree-Ireland chair this
11 meeting?

12 A No. I probably would have chaired it.

13 Q Probably, because Mr. Crabtree-Ireland was
14 on the telephone, you would have chaired it in
15 person there?

16 A Yes.

17 Q Did you know ahead of time before June 4,
18 2013, that the service agreement was going to be
19 discussed at this meeting?

20 A I don't recall specifically that it was
21 going to be discussed, but I'm sure I -- I'm sure I
22 saw it on the agenda when I got it.

23 Q Was the proposed service agreement sent out
24 in advance of the meeting so the board of trustee
25 members could review the service agreement?

1 A I believe that it would have been. Yes.

2 Q Do you recall at the June 4, 2013, meeting,
3 specifically with respect to the service fee, that
4 Duncan Crabtree-Ireland did not vote on that
5 particular motion?

6 A I don't recall that.

7 Q Okay. So if I were to say to you,
8 "Do you know one way or the other whether
9 Mr. Crabtree-Ireland actually voted on the service
10 fee motion?" you wouldn't recall one way or the
11 other?

12 A I wouldn't recall.

13 Q Okay. If I told you that Duncan abstained
14 or didn't vote because he felt he had a conflict of
15 interest in voting on this, would that refresh your
16 recollection about what he may have done?

17 MR. THOMAS: Objection. That misstates
18 Mr. Crabtree-Ireland's testimony quite egregiously.
19 Lacks foundation.

20 MR. KIESEL: Object to form. I got that.
21 Enough.

22 THE WITNESS: Are you looking for an
23 answer?

24 BY MR. KIESEL:

25 Q Yes.

1 THE WITNESS: A.J.?

2 MR. THOMAS: You can answer the question.

3 THE WITNESS: I'm sorry. Would you read
4 the question back?

5 BY MR. KIESEL:

6 Q Sure.

7 The question was, if I told you Duncan
8 abstained or didn't vote because he felt he had a
9 conflict in interest in voting on this, would that
10 refresh your recollection about what he may have
11 done?

12 A No.

13 Q Thank you.

14 Before this meeting on June 4, 2013, did
15 you speak with any other trustees about the proposed
16 service agreement?

17 MR. THOMAS: Object to the form.

18 THE WITNESS: I'm sure that I did. I don't
19 recall what specifically was said.

20 BY MR. KIESEL:

21 Q Do you recall whether you had an
22 opportunity before June 4, 2013, and the vote --
23 whether you spoke to each of the trustees? one of
24 the trustees? Just a sense of who you may have
25 communicated with?

1 A I was -- I was around Sam Folio a lot, as
2 two officers would be of the union. But I would
3 have had discussions with him and also with Bruce
4 Bouton at some point.

5 Q If I were to say --

6 A I don't recall specific discussions.

7 Q Could you give us a sense of what those
8 discussions may have consisted of with Mr. Bouton
9 and Mr. Folio?

10 A As I said, I don't recall specifically what
11 was said.

12 Q Would the gist of it be that you felt that
13 the AFM was subsidizing the Fund and, therefore,
14 should be compensated for the value of the services
15 it provided to the Fund?

16 A I don't think that I would agree that there
17 were conversations specifically as you have just
18 tried to lead me to agree to. But I will say that
19 we had discussions about a service fee and what the
20 percentage would be and that it was -- there was
21 certainly no objection to any of that at all.

22 Q Did Mr. Bouton or Mr. Folio express any
23 concern to you in being asked to vote on a
24 resolution that would take money from the Fund and,
25 therefore, reduce the amount available for payment

1 Federation of Musicians and SAG-AFTRA for ongoing
2 support, including membership data and other
3 information and services to assist in facilitating
4 distributions. It was moved, seconded, and carried
5 that the Fund enter into a service agreement with
6 the two unions, pursuant to which the unions would
7 provide information and services important to the
8 Fund, and the Fund would pay a service fee
9 consisting of an amount equal to 3 percent of each
10 distribution, after the deduction of administrative
11 fees, with one-half payable to the AFM and one-half
12 payable to SAG-AFTRA."

13 Q When it says "A discussion ensued regarding
14 the Fund," do you recall --

15 (Connectivity disruption.)

16 THE WITNESS: I'm sorry. You're breaking
17 up, Paul. You're breaking up a little bit.

18 BY MR. KIESEL:

19 Q Yeah. Not a problem.

20 A Would you start over?

21 Q Of course. Sorry. I heard sort of an echo
22 at the same time. I appreciate that.

23 So it says "A discussion ensued regarding
24 the Fund entering into a service agreement with" the
25 unions, and I'm asking you what was the discussion

1 that ensued regarding a service fee at the meeting?

2 A The best of my recollection is that, you
3 know, everyone there commented about it. There were
4 no unfavorable comments. There wasn't a whole lot
5 of discussion, but what discussion there was was not
6 adversarial. There was consensus. My best rel- --
7 I'm sorry -- my best recollection is that there was
8 consensus among everyone that this was the right
9 thing to do.

10 Q Do you recall any of the trustees speaking
11 against the proposal?

12 A I do not.

13 Q Do you recall what sorts of questions may
14 have been asked by other trustees regarding the
15 proposal?

16 A I don't recall questions from the trustees.

17 Q Do you recall that there were, in fact, no
18 questions from the trustees, or you just -- you know
19 there were questions but "I can't recall what those
20 questions were"? Which might that be?

21 A I don't recall any questions from the
22 trustees. I think there was some discussion, but
23 the discussions were not in the form of questions.
24 I think the discussions were that there was a
25 consensus among the group to adopt the motion.

Exhibit 8

1 UNITED STATES DISTRICT COURT
 2 CENTRAL DISTRICT OF CALIFORNIA
 3 KEVIN RISTO, on behalf of)
 himself and all others)
 4 similarly situated,)
)
 5 Plaintiff(s),)
)
 6 vs.) Case No.:
) 2:18-cv-07241-CAS-PLA
 7 SCREEN ACTORS GUILD-AMERICAN)
 FEDERATION OF TELEVISION AND)
 8 RADIO ARTISTS; a Delaware)
 corporation; AMERICAN)
 9 FEDERATION OF MUSICIANS OF THE)
 UNITED STATES AND CANADA, a)
 10 California nonprofit)
 corporation; et al.,)
 11)
 Defendants.)
 12 _____)
 13
 14

15 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
 16 VIDEOTAPED DEPOSITION OF
 17 RULE 30(b)(6) WITNESS FOR THE AMERICAN FEDERATION OF
 18 MUSICIANS, BY: RAYMOND HAIR
 19 Appearing Remotely From
 20 Denton, Texas
 21 Thursday, February 25, 2021
 22
 23
 24 Stenographically reported by:
 EMILY SAMELSON, CSR No. 14043
 25 Golkow Job No.: 269545

1 membership dues, because these are dues based on the
2 earnings that are received by the members under
3 those agreements.

4 And then -- and then beyond that, there
5 are different kinds of dues based on earnings in
6 freelance employment.

7 Q Okay. And how is freelance employment
8 defined?

9 A Freelance employment would be employment
10 either under a freelance engagement contract or
11 just general freelance work that may be done under a
12 collective bargaining agreement but is not regular
13 in nature.

14 Q Got it.

15 What currently is the AFM's total
16 membership by way of numbers, approximately?

17 A Are you saying today?

18 Q Yes, today.

19 A I don't know exactly what it is today. We
20 have been -- we've been monitoring it as a result
21 of COVID, because the live -- the live entertainment
22 sector is completely shut down right now.

23 We do have employment currently in various
24 media sectors. For example, live television, film
25 scoring, and other electronic media sectors, those

1 are -- those are still operating. But I believe the
2 last -- the last estimate that I saw or heard of or
3 heard from our secretary-treasurer was in the
4 neighborhood of 68,000 members.

5 Q And if we were to go back to pre-pandemic
6 times and say January of 2020, what would the number
7 have been approximately just before the pandemic
8 hit?

9 A It may have been around 70- -- early --
10 70,000-plus. And I'm just -- I'm trying to recall.
11 I don't have any numbers in front of me here. So --

12 Q Understood. Well --

13 A And that fluctuates, by the way.

14 Q I was going to ask you about fluctuation.

15 Is it fair to say that -- what would be
16 the fluctuation annually? Maybe 5 percent?
17 1 percent?

18 Do you have a sense of what the annual
19 fluctuation tends to be?

20 A Well, it's based on quarterly --
21 quarterly -- it's based on quarterly estimations.
22 And that could go anywhere from -- for example, it
23 could be anywhere from 62,000 to 72,000, or 60,000
24 to 70,000. So it just -- it fluctuates.

25 Q If we were to talk about 2010, August 1,

1 that there are other sources of income that you
2 receive.

3 Do you know, say, in 2017 how many AFM
4 members are Fund beneficiaries?

5 A I don't know.

6 Q Would it be --

7 A I have an idea.

8 Q Yeah. Yeah. Yeah. You're testifying as
9 the person most qualified from the AFM on this
10 particular subject. So I want -- your idea needs to
11 be based upon some research or knowledge and not
12 sort of an arbitrary number.

13 But what would be your best estimate as
14 to the number of AFM members that are Fund
15 beneficiaries?

16 MR. THOMAS: Well, first of all, I have to
17 object. Because I don't think there is a 30(b)(6)
18 topic on the number of AFM members who are also Fund
19 participants. So I think it's perfectly appropriate
20 for the witness to testify to the best of his
21 knowledge or recollection without having done any
22 homework, because I don't think that was one of the
23 topics he was supposed to do homework on.

24 BY MR. KIESEL:

25 Q Okay. We can -- I'll take your best

1 estimate.

2 A Well, and you said "AFM." You didn't say
3 "unions."

4 Q Well, when you say "unions," are you
5 referring to the locals, or are you referring to
6 SAG-AFTRA?

7 A Yeah, I'm referring to SAG-AFTRA and AFM as
8 "unions."

9 Q Yeah. No, right. So let me just -- I want
10 to know specifically AFM as opposed to SAG-AFTRA. I
11 asked that question of Duncan Crabtree-Ireland to
12 testify for the SAG-AFTRA. So I'm asking you the
13 question now on behalf of AFM.

14 A Well, I want to, first of all, say that
15 there are members who are in good standing, there
16 are members who have been suspended, or there
17 members who have resigned. There are members who
18 have retired. And so -- but my best estimate, I
19 really would say it like this.

20 Of the Fund beneficiaries, I would say
21 50 percent of those Fund beneficiaries or more are
22 members of our unions. I wouldn't separate it out
23 to AFM and SAG-AFTRA, but I would say there are more
24 musicians than vocalists who are being paid.

25 And of the musicians who are being paid,

1 and overbroad.

2 THE WITNESS: I think I would look at it in
3 reverse. I think that the AFM advances the Fund's
4 mission.

5 BY MR. KIESEL:

6 Q But you would admit that the Fund advances
7 the interests of the AFM and its members to ensure
8 that they get paid for the work they do in a timely
9 manner?

10 MR. THOMAS: Objection to the form. Vague
11 and overbroad.

12 Which members are you talking about?

13 THE WITNESS: The Fund collects royalties
14 due nonfeatured performers on performances and
15 distributes them to those who are entitled to
16 receive them. And the AFM, you know, plays a proud
17 part in that. I personally have negotiated
18 agreements with foreign collectives. So -- and I --
19 and I have a really good feeling when I'm able to
20 get foreign collectives to pay more money into the
21 Fund.

22 BY MR. KIESEL:

23 Q Okay. Let's go to page 30 of this Exhibit
24 Number 2, the AFM bylaws. And I think this might be
25 highlighted for us as well. There we go.

1 BY MR. KIESEL:

2 Q You're consistent with Mr. Duncan
3 Crabtree-Ireland on that.

4 A I have a lot of respect for Duncan.

5 Q Me too.

6 All right. We're going to go on to
7 Topic Number 2, and this is the appointment of union
8 board members as board members of the Fund. And
9 we're going to take a look at, I think -- is it
10 Exhibit Number 3? And this is the Trust Fund
11 Agreement.

12 (Exhibit 3 was marked for identification.)

13 BY MR. KIESEL:

14 Q And the Trust Fund Agreement we're looking
15 at now is the 2012 Trust Fund Agreement, July 26,
16 2012.

17 And I believe we looked at this section
18 already, Article III, Trustees. But now in your
19 capacity as the 30(b)(6) witness for AFM, we're just
20 going to revisit this briefly.

21 Could I ask you to read into the record
22 "Article III, Trustees"?

23 A You want me to read the highlighted
24 portion?

25 Q Please.

1 A (As read): "Section 1. AFM and SAG-AFTRA
2 Trustees. The operation and administration of the
3 Fund shall be jointly the responsibility of six
4 trustees, three appointed by the AFM, of which no
5 fewer than one shall be a rank-and-file
6 representative, and three appointed by SAG-AFTRA, of
7 which no fewer than one shall be a rank-and-file
8 representative."

9 Q Am I correct? There's no written policy
10 for this process at the AFM?

11 A Yes.

12 Q And the process for appointing
13 rank-and-file or regular trustees is the same on
14 the AFM side; correct?

15 MR. THOMAS: Object to the form.

16 THE WITNESS: Would you say that again,
17 please?

18 BY MR. KIESEL:

19 Q Sure.

20 The process for appointing someone who is
21 the rank-and-file member or just a regular trustee
22 is the same process at the AFM. It's not called out
23 specifically?

24 MR. THOMAS: Same objection.

25 THE WITNESS: Yes.

DATA PURCHASE AND SERVICES AGREEMENT

This Data Purchase and Services Agreement ("Agreement"), dated as of July 22, 2013, 2013 (the "Effective Date"), is made by and between the American Federation of Musicians of the United States and Canada, AFL-CIO-CLC ("AFM"), the Screen Actors Guild - American Federation of Television and Radio Artists ("SAG-AFTRA") and the AFM and SAG-AFTRA Intellectual Property Rights Distribution Fund (the "Fund"). AFM and SAG-AFTRA are sometimes referred to herein individually as a "Union" and collectively as the "Unions." AFM, SAG-AFTRA and the Fund are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, by an Agreement and Declaration of Trust dated September 16, 1998, as amended and restated on July 26, 2012, the Unions formed the Fund to collect and distribute certain artist royalties that are appropriate for collective administration;

WHEREAS, the Unions have in the past provided to the Fund certain data, as well as certain services of outside counsel and in-house staff to assist the Fund in its operation and administration and to represent the interests of the Fund in various external matters, without being reimbursed for their costs thereof;

WHEREAS, the Agreement and Declaration of Trust authorizes the Trustees of the Fund to purchase relevant data from the Unions (and others) and to employ assistants; and

WHEREAS, the Trustees of the Fund have determined that it is reasonable and appropriate at this time to memorialize arrangements for the provision by the Unions to the Fund of certain data and assistance in exchange for reasonable compensation to the Unions from the Fund;

NOW, THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

1. **Provision of Data.** From and after the Effective Date, each Union shall provide the Fund the following data, in a manner comparable to the way such data has been provided immediately prior to the Effective Date:

- **Access to member databases to enable the Fund to obtain identifying and contact information for members.**
- **Access to session reports and "B-forms," or databases containing information derived therefrom, that in either case, identify the recordings made at recording sessions and provide identifying and contact information for performers (Union members and nonmembers) who performed at the session.**

Each Union retains all its ownership rights in its data, and all such data shall be considered Confidential Information of the relevant Union subject to the provisions of Section 7. The Fund is authorized to, and shall, access, reproduce and use such data solely for purposes of distribution of royalties collected by the Fund to the relevant persons. In its use of such data, the Fund

further shall comply with the provisions of any applicable Union privacy policy of which such Union advises the Fund in writing from time to time.

2. Representation of Fund Interests. Each Union shall use commercially reasonable efforts to further the interests of the Fund and the Fund's beneficiaries through its participation in the following forums (or their successors):

- The board of SoundExchange, Inc.;
- The board of the Alliance of Artists and Record Companies;
- The musicFIRST Coalition;
- Activities under the auspices of the U.S. Copyright Office and other U.S. governmental entities; and
- Activities under the auspices of international entities such as the International Federation of Musicians, International Federation of Actors, World Intellectual Property Organization, Societies' Council for the Collective Management of Performers' Rights.

To the extent that the Fund may communicate to a Union particular interests, concerns or objectives relevant to the Unions' participation in the foregoing forums, each Union shall use commercially reasonable efforts promptly to address the Fund's requests in that regard, except to the extent the Union determines that such requests are contrary to the interests of its members.

3. Mandates. Each Union shall use commercially reasonable efforts to obtain from its members authorization to act as such members' representative for the purpose of collecting and distributing government-mandated or other compulsory royalties or remuneration payable to performers under U.S. or foreign law. Each Union shall use commercially reasonable efforts to extend to the Fund the benefit of such authorizations that the Union obtains. The Unions may fulfill the foregoing obligation by, for example, negotiating and signing together with the Fund, or authorizing the Fund to enter into, agreements with foreign collecting societies pursuant to which the Fund will be entitled to claim, and the foreign society will agree to pay to the Fund, foreign royalties owed to those U.S. performers for whom the Fund exercises a mandate on behalf of either or both Unions.

4. Other Services. From and after the Effective Date, it is not anticipated that either Union will provide the Fund material services in support of the Fund's operation and administration, except as specifically described above. However, the Unions shall not unreasonably refuse to provide the Fund incidental advice and assistance as the Fund may request from time to time.

5. Services in General. The foregoing data and services shall be provided in accordance with any schedule agreed upon between the Fund and a Union, or in the absence of such agreement, promptly upon the Fund's request. To the extent that a Union may provide the Fund any documents or other recorded information other than the data described in Section 1 (the Fund's rights to which are also addressed in Section 1), and subject to Section 7, such Union

hereby grants the Fund a nonexclusive, perpetual, worldwide license to reproduce, adapt, distribute, perform and display such item and authorize others to do the same for the Fund's purposes. At no time shall the Fund be deemed to be the employer of a Union's personnel providing services hereunder. Each Union, and not the Fund, shall be responsible for payment of compensation to its personnel, required payroll deductions, social security and Medicare contributions, and unemployment, disability and workers' compensation insurance, all as required under law from time to time.

6. Payment. In consideration of the foregoing, the Fund shall pay each Union, within 30 days after the conclusion of each of the Fund's distribution cycles, 3% of the amount distributed by the Fund in such distribution cycle. Each such payment shall be accompanied by a statement setting forth the computation of the payment amount. Such payment shall constitute complete compensation of the Unions and their personnel for providing the data and services contemplated by this Agreement. There shall be no additional charges or expense reimbursement associated with the Unions' provision of the data and services contemplated by this Agreement.

7. Confidentiality.

7.1. "Confidential Information" means any material or information that (i) a Party (the "Disclosing Party") treats as confidential; (ii) the Disclosing Party provides to another Party (the "Receiving Party") in connection with the performance of this Agreement; and (iii) the Receiving Party reasonably should recognize as being confidential material or information of the Disclosing Party. The Receiving Party shall not use the Disclosing Party's Confidential Information for any purpose other than the performance of this Agreement or enjoyment of benefits provided under this Agreement, and shall not disclose the Disclosing Party's Confidential Information to any person other than its directors, officers, employees and contractors who have a need to know such Confidential Information and are subject to a nondisclosure obligation comparable in scope to this Section 7.

7.2. Notwithstanding Paragraph 7.1, the Receiving Party may disclose any material or information that it can demonstrate is (i) or becomes publicly known through no fault of the Receiving Party; (ii) developed independently by the Receiving Party; (iii) known by the Receiving Party prior to its disclosure by the Disclosing Party; or (iv) rightfully obtained from a third party not obligated to preserve its confidentiality who did not receive the material or information directly or indirectly from the Receiving Party. The Receiving Party also may disclose materials or information to the extent required by a court or other governmental authority, provided that the Receiving Party (a) gives the Disclosing Party prompt notice of the disclosure, (b) uses reasonable efforts to resist disclosing the material or information, and (c) cooperates with the Disclosing Party on request to obtain a protective order or otherwise limit the disclosure.

7.3. The receiving Party acknowledges that its breach of this Section 7 would cause the Disclosing Party irreparable injury for which it would not have an adequate remedy at law. In the event of a breach, the Disclosing Party shall be entitled to injunctive relief in addition to any other remedies it may have at law or in equity.

8. Representations, Warranties and Covenants

8.1 Each Party represents and warrants that it has the right, power and authority to enter into and to perform this Agreement.

8.2 Each Union represents, warrants and covenants that the services it is to provide under this Agreement shall be provided (i) in a workmanlike manner; (ii) in accordance with the standards of care and diligence and the level of skill, knowledge and judgment normally practiced by organizations of a similar nature; and (iii) in compliance with all applicable laws and regulations.

8.3 Each Union represents, warrants and covenants that the data, and any other documents or other recorded information it may provide to the Fund in the performance of this Agreement, will not infringe or misappropriate any patent, copyright, trade secret, or other proprietary right of any third party or otherwise conflict with the rights of any third party.

9. Indemnity. Each Party shall defend, indemnify and hold harmless each other Party and its directors, officers and employees from and against any third party claims to the extent relating to or resulting from any breach of this Agreement by the indemnifying Party. The indemnifying Party shall have the right to exercise reasonable control over any litigation within the scope of this indemnity; provided, however, that the indemnified persons shall have the right to participate in any such litigation at their own expense insofar as it concerns claims against them. This indemnity shall be inapplicable to the extent that the indemnifying Party is not notified promptly of a claim and is prejudiced by the delay in notice. All indemnified persons shall cooperate to the extent necessary in the defense of any claim within the scope of this indemnity.

10. LIMITATION OF LIABILITY. EXCEPT FOR A CLAIM OF INDEMNIFICATION PURSUANT TO SECTION 9, OR FOR A BREACH OF SECTION 7, IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES.

11. Term and Termination of this Agreement. The term of this Agreement shall commence as of the Effective Date and shall continue thereafter unless terminated in accordance with this Section 11. As between each Union and the Fund, this Agreement may be terminated (i) at will upon one year's written notice to the other Party, or (ii) if the other Party has materially breached this Agreement and failed to remedy that breach within 30 days after receiving written notice of that breach, upon further written notice by the non-breaching Party. Termination of this Agreement as between one Union and the Fund shall not, by itself, cause this Agreement to terminate as between the other Union and the Fund. Upon the effective date of termination, the relevant Union shall no longer be obligated to provide data or services as described in Sections 1-5. The Fund shall pay the relevant Union in accordance with Section 6 for data or services rendered through the effective date of termination on a prorated basis over the Fund's then current distribution cycle. The provisions of Sections 7-13 shall survive the termination of this Agreement.

12. Notices. All notices sent under this Agreement shall be in writing and hand delivered or delivered by prepaid overnight courier. Notices shall be sent to the Parties at the following addresses or such other addresses as the Parties subsequently may provide:

If to AFM: American Federation of Musicians of the United States & Canada
1501 Broadway, Suite 600
New York, NY 10036
Attention: President Raymond M. Hair, Jr.
Telephone: (212) 869-1330, ext. 212

If to SAG-AFTRA: SAG-AFTRA
5757 Wilshire Blvd., 7th Floor
Los Angeles, CA 90036
Attention: Chief Administrative Officer Duncan Crabtree-Ireland
Telephone: (323) 236-3259

If to the Fund: AFM & SAG-AFTRA Fund Distribution Fund
12001 Ventura Place, 5th Floor
Studio City, CA 91604
Attention: Administrator Dennis Dreith
Telephone: (818) 755-7777

13. Miscellaneous.

13.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of New York, without regard to its conflict of laws principles.

13.2. Severability. The provisions of this Agreement are severable, and the unenforceability of any provision of this Agreement shall not affect the enforceability of the remainder of this Agreement.

13.3. Cumulative Rights and Remedies. The rights and remedies provided in this Agreement and all other rights and remedies available to a Party at law or in equity are, to the extent permitted by law, cumulative and not exclusive of any other right or remedy now or hereafter available at law or in equity.

13.4. Assignment. No Party may assign any of its rights or delegate any of its duties under this Agreement to any third party without the prior written consent of the other Parties, which shall not be withheld unreasonably. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted assigns.

13.5. Relationship of the Parties. Nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the Parties, or as authorizing any Party to act as agent for the other or to enter into contracts on behalf of any other Party.

13.6. Amendments. This Agreement may be modified or amended only by written agreement of the Parties.

13.7. Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior agreements between the Parties concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers.

AMERICAN FEDERATION OF MUSICIANS OF
THE UNITED STATES AND CANADA, AFL-CIO-CLC

By: [Signature]

Name: Raymond M. Hair Jr.

Title: President

Date: 7/22/13

SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO
ARTISTS

By: [Signature]

Name: Duncan Crabtree-Indiana

Title: Chief Admin Officer + General Counsel

Date: 7/22/13

AFM & SAG-AFTRA INTELLECTUAL PROPERTY RIGHTS DISTRIBUTION FUND

By: [Signature]

Name: Dennis Dreith

Title: Administrator

Date: 7/24/13

Exhibit 9

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KEVIN RISTO, on behalf of)
himself and all others)
similarly situated,)
Plaintiffs,)
Case No.
vs.) 2:18-cv-07241-CAS-PLA
)
SCREEN ACTORS GUILD -)
AMERICAN FEDERATION OF)
TELEVISION AND RADIO ARTISTS,)
a Delaware corporation,)
et al.,)
Defendants.)
-----)

VIDEOCONFERENCE DEPOSITION OF SHARI HOFFMAN
Friday, February 19, 2021
Volume I

Reported by:
KATHLEEN E. BARNEY
CSR No. 5698
Job No. 4420582

PAGES 1 - 164

1 it was done in Los Angeles.

2 Q In doing your piece of the project, were
3 there other resources that you consulted other than
4 the B forms?

5 A Local officers, likely. Other than that, I 10:04:51
6 don't recall the protocols. That's so long ago.

7 Q Right.

8 So turning back to when you were working at
9 the -- at the fund from 2010 to 2014, when you first
10 started working there, where was the -- where was 10:05:12
11 the fund located?

12 A When I first started -- I don't know when
13 they moved over to 11138 Ventura Boulevard, but I
14 worked -- I know when I was in Live Television, I
15 was housed at the Film Musicians Secondary Markets 10:05:31
16 Fund. So there was an overlap where I -- what is
17 their address? The big Citi National Bank building
18 on the corner of Ventura and Laurel Canyon.

19 Then we moved into small offices on -- at
20 11138 Ventura Boulevard just a block and a half 10:05:49
21 away.

22 Q Okay. So when you first started working at
23 the fund, the fund essentially was housed at the
24 offices of the Film Musicians Secondary Markets
25 Fund, right? 10:06:05

1 A I can't confirm that because of the overlap.

2 Q Okay. But at some point in time, the fund
3 moved to the offices you just described --

4 A Yeah.

5 Q -- a block and a half away? 10:06:14

6 Do you remember when that was?

7 A No.

8 Q Okay.

9 MS. MCCONNELL: Mr. Thomas, we've been going
10 about an hour. Whenever you would -- 10:06:22

11 MR. THOMAS: Yeah, why don't we take like
12 a -- you want to take like a five-minute, ten-minute
13 break?

14 Let's take a ten-minute break so we can all
15 stretch our legs a bit. Let's go off the record. 10:06:32

16 THE VIDEOGRAPHER: We're now going off the
17 record. The time is 10:06.

18 (Recess.)

19 THE VIDEOGRAPHER: We're now back on the
20 record. The time is 10:16. 10:17:03

21 BY MR. THOMAS:

22 Q Ms. Hoffman, just going back briefly to your
23 testimony about being a consultant to the fund in
24 about 2006, 2007. You said you consulted session
25 reports and B form reports. Where were you getting 10:17:21

From: Shari Hoffman
Sent: Wednesday, October 24, 2012 12:25 PM
To: Dennis Dreith
CC: Jo-Anne McGettrick
Subject: RE: Services and Assets that the Unions Provide to the AFM/SAG-AFTRA Fund
Attachments: ASSETS AND SERVICES PROVIDED TO THE FUND.docx

I made one small correction to the attached.

For Audiovisual and Symphonic royalties (there is no mention of the Featured Artist royalties that we collect from Sound Exchange given that they are not equipped to do so), we have extended much of research to other sources such as websites (Baseline, IMDB, Netflix), vocal contractors, composers, orchestra players, orchestra managers, the Pension Fund and ASCAP. Unlike Live TV, we do not rely much on Local 47 or Local 802's databases since most of our contracts have been previously carried over from FMSMF. However, we do cross reference bad addresses with the AFM International website as needed.

Shari Hoffman

*Manager Audiovisual & Symphonic Recordings
AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund
11846 Ventura Blvd. Suite 208
Studio City, CA 91604
(818) 255-7980 Ext 868
(818) 255-7981 Fax
shoffman@raroyalties.org*

From: Dennis Dreith
Sent: Wednesday, October 24, 2012 12:00 PM
To: Jo-Anne McGettrick; Shari Hoffman
Subject: FW: Services and Assets that the Unions Provide to the AFM/SAG-AFTRA Fund

This is what Trish is using for a basis to try and reimburse the AFM for services proved to us. While I fully support the concept, I do want to make sure she is painting an accurate picture. I know that our research goes far beyond just looking at AFM session reports, but wanted your take on this.

DD

Privileged

**Exhibit
DEFS141**
2/19/2021
Hoffman

Exhibit 10

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 KEVIN RISTO,)
)
4 Plaintiffs,)
)
5 vs.) No.
) 2:18-cv-07241-CAS-
6 SCREEN ACTORS) PLA
 GUILD-AMERICAN FEDERATION)
7 OF TELEVISION AND RADIO)
 ARTISTS, et al.,)
8)
 Defendants.)
9 _____)
10
11

12 VIDEOTAPED DEPOSITION OF JON JOYCE
13 Volume I
14 APPEARING REMOTELY FROM
15 BRATTLEBORO, VERMONT
16 TUESDAY, SEPTEMBER 22ND, 2020
17
18
19
20

21 REPORTED BY:
 MONICA LEPE-GEORG
22 CSR No. 11976
 APPEARING REMOTELY FROM CLOVERDALE, CALIFORNIA
23
 Job No. 255738
24
25 PAGES 1 - 107

1 A. No. I have -- I don't have anything other
2 open.

3 Q. Okay. Do you have any documents in front of
4 you today, other than the music notes behind you?

5 A. No.

6 Q. I generally like to take a five- to ten-minute
7 break about every hour, but if you need to take a break
8 sooner than that, just let me know and we'll go off the
9 record and pick it up in five, ten minutes, okay?

10 A. Thank you.

11 Q. I want to talk a little bit about your
12 background. It's my understanding that you're a
13 professional singer; is that correct?

14 A. Yes.

15 Q. And I read online that your parents are
16 vocalists as well; is that correct?

17 A. Were, yes.

18 Q. So you group up in a musical family; is that
19 true?

20 A. Yes.

21 Q. Can you walk me through any formal training or
22 education that you had?

23 A. Well, I studied cello and piano at a young
24 age. There was a -- a singers' workshop that my father
25 ran when I was 12 and so I learned sight-singing and

1 labels; is that correct?

2 A. Right.

3 Q. Did the record labels have any legal
4 representation in that negotiation?

5 A. Yes.

6 Q. Do you remember who they were?

7 A. Well, I remember Norman Samnick, who was a --
8 a perennial force. Yeah, I think he put -- I believe
9 he was an attorney for Warner Brothers Records and was
10 the chair of the -- of the alliance of recording
11 artists of -- of labels. I don't know what they call
12 themselves, but...

13 Q. Do you know why that CBA expires every three
14 years?

15 A. So we could improve the contract in
16 negotiation.

17 Q. Okay. When did you become a fund trustee?

18 A. I believe in 1998.

19 Q. Is this a position you applied for or were you
20 asked?

21 A. I was asked and -- and appointed, I believe,
22 by the -- the president of AFTRA at the time and -- and
23 the -- and the executive director.

24 Q. If you know, are you considered the
25 rank-and-file trustee of the fund?

1 A. I don't know. I'm -- I'm -- I'm one of two
2 rank-and-file trustees of the fund currently. The
3 other is Dan -- Dan Navarro.

4 Q. When you started, were you one of two
5 rank-and-file trustees?

6 A. No. I was the only one from -- from the
7 union.

8 Q. Got it.

9 Do you know how the other trustees were
10 selected for their appointment at the fund?

11 MR. THOMAS: Objection. Vague as to timing.

12 THE WITNESS: I don't know.

13 BY MS. MCCONNELL:

14 Q. Okay. Do you know how you were appointed as
15 the trustee in 1998?

16 A. My memory tells me that I was nominated and
17 elected by the board, or appointed and approved by the
18 board. Appointed by the president and approved by the
19 board.

20 Q. Okay.

21 A. That's how I remember it.

22 Q. In your own words, what do you understand the
23 duties of a fund trustee to be?

24 A. To see that the fund is -- is operating
25 efficiently, making as broad of distributions to

1 that we're currently involved in. I'm thinking it was
2 about ten years ago, but...

3 Q. Okay. Sounds right.

4 What are session reports?

5 A. Oh, boy. Session reports are the -- the --
6 the legal record of what we background singers -- and
7 that's what I was mostly involved with, filled out to
8 get paid and to keep the union aware of who was
9 recording what and where and for whom, for what label,
10 what -- and what artist, tune titles, and over the --
11 over the years, became an essential part of fund data.

12 Q. Why -- why is it important for the unions to
13 know what background singers are performing on a track
14 and where the recording is happening?

15 A. Well, before the fund was -- existed, the
16 union received payment at the offices and checked to
17 make sure that they were compliant with the contractual
18 obligations and -- and then forwarded the money on to
19 performers, also to make sure that if they were a union
20 member, that they were paid up in good standing.

21 Q. Okay. I'm trying to understand the last part
22 of it.

23 Is -- is there any requirement that a featured
24 musician use nonfeatured musicians that are union
25 members?

1 A. No.

2 Q. At any time, have you considered whether a
3 percentage fee is appropriate for the services
4 agreement or whether the service fee should be tied to
5 the reasonable cost of services that the union is
6 providing?

7 A. Restate the question, please.

8 Q. Sure. At any point in time, have you
9 considered whether a percentage fee is appropriate for
10 the services agreement or whether a service fee should
11 be tied to the reasonable cost of services that the
12 union is providing?

13 A. In that case -- in that sense, no.

14 Q. Why not?

15 A. I have felt, from the beginning, that -- that
16 a service fee is -- is appropriate for the value of the
17 information that we're getting and -- and I -- and I
18 don't -- I -- I can't imagine finding another way to
19 compensate the unions for the time.

20 Q. Well, what about compensating them for the
21 time using an hourly rate?

22 A. That's -- it -- that really is not my -- not
23 my expertise -- area of expertise.

24 Q. You seem to have a lot of expertise with
25 collective bargaining agreements. In your opinion,

1 MR. THOMAS: Objection. Vague.

2 MS. MCCONNELL: Okay.

3 BY MS. MCCONNELL:

4 Q. Did Mr. Crabtree-Ireland express to you that
5 he thought SAG-AFTRA could do more in terms of locating
6 the fund's members?

7 A. No.

8 MR. THOMAS: Objection. Vague. Lacks
9 foundation.

10 BY MS. MCCONNELL:

11 Q. In 2015 --

12 A. Uh-hm.

13 Q. -- when you found out that the fund paid
14 \$545,690 to the unions, did you think that that amount
15 represented the reasonable costs of the services
16 provided by the unions to the fund?

17 A. Yes.

18 Q. Were you able to justify, in your mind, the
19 increase of the amount of the service fee from 2014 to
20 2015?

21 MR. THOMAS: Objection. Vague.

22 THE WITNESS: Yes.

23 BY MS. MCCONNELL:

24 Q. Did anyone tell you that there was an increase
25 in the amount of work the unions did to benefit the

1 A. No.

2 Q. So when I asked you whether \$840,000 -- well,
3 \$840,908 was the reasonable cost of the services
4 provided by the unions to the fund, what did you mean
5 when you said yes?

6 A. I -- I have not -- I didn't -- didn't really
7 relate to the reasonable cost as a concept.

8 Q. Okay.

9 A. I'm -- that -- that's my assumption, is that
10 it did reflect the reasonable costs.

11 MR. THOMAS: I also objected to the question
12 as vague and ambiguous because the previous time you
13 said "reasonable value," Mariana.

14 MS. MCCONNELL: Okay. Well, I'm glad I asked
15 him to clarify, then.

16 BY MS. MCCONNELL:

17 Q. Did you ever see, from any source, a
18 breakdown -- a financial breakdown of the services
19 provided by the unions to the fund?

20 MR. THOMAS: Objection. Vague. Overbroad.

21 THE WITNESS: No.

22 BY MS. MCCONNELL:

23 Q. How are you able to evaluate whether \$840,908,
24 in 2016, is a reasonable amount of money for the fund
25 to pay the unions?

1 A. I -- the only thing that I can say is that, in
2 my experience, the only source of data and information
3 was the unions for the fund. And it was incalculable,
4 the -- the value of that, to the fund.

5 Q. So, no matter what the amount of money is that
6 the fund pays the unions, in your mind, that would be
7 reasonable?

8 MR. THOMAS: Objection. Misstates his
9 testimony. Overbroad.

10 THE WITNESS: Let me just clarify that, and
11 I'm -- I'm sure Andrew will hate me for this, but I --

12 MR. THOMAS: Do whatever you want.

13 THE WITNESS: I -- I, in the last few years,
14 have -- and I think I mentioned this earlier in my
15 testimony, that some review of the -- the service
16 agreement, the actual amount of money being paid to the
17 union should be taken up and -- and that's my -- that's
18 my position.

19 BY MS. MCCONNELL:

20 Q. Is there a number in your mind where you think
21 that's too much money?

22 A. No.

23 MR. THOMAS: Objection. Vague.

24 THE WITNESS: And -- no, just as -- just as
25 I -- I try not to assess a value to CEOs of major

1 BY MS. MCCONNELL:

2 Q. In your mind, can you justify almost
3 \$2 million for the fund to pay the unions in 2020?

4 A. Yes.

5 Q. Okay. How can you do that?

6 A. Based upon the relationship that the union has
7 been to the fund, the -- the relationship that the
8 union has been to the industry, to all participants,
9 that it's an invaluable asset to the fund in its
10 ability to -- to get money out and to -- and to get
11 money to participants.

12 And as I said, I also feel that, at some
13 point, the red- -- the trustees of the fund need to
14 have a conversation about limits to payouts to the
15 unions.

16 Q. When you are talking about the invaluable
17 asset, are you referring to the information contained
18 in the session reports?

19 A. Among other things. Also, the -- the lobbying
20 presence and the value of contracts to not only
21 members, but to nonunion members who use that as a --
22 as a -- a threshold of employment and -- yeah.

23 Q. Would you agree with me that the unions have
24 other uses, that we've talked about today, for
25 compiling the information in the session reports?